IN THE CIRCUIT COURT FOR ANNE ARUNDEL COUNTY, MARYLAND

STATE OF MARYLAND Criminal Docket

vs. CASE NO. C-02-CR-18-001515

JARROD WARREN RAMOS,

Defendant.

_____/

OFFICIAL TRANSCRIPT

MOTIONS HEARING

Annapolis, Maryland

Wednesday, July 17, 2019

BEFORE:

THE HONORABLE LAURA S. RIPKEN, Judge

APPEARANCES:

For the State:
Anne Colt Leitess, Esquire, Assistant States Attorney
James Tuomey, Esquire, Assistant States Attorney

For the Defendant:
William M. Davis, Esquire, Office of the Public Defender
Katy Colleen O'Donnell, Esquire,
Office of the Public Defender
Elizabeth W. Palan, Office of the Public Defender

Transcribed from electronic recording by:

Sally Sybert Gessner, Transcriptionist
Bonnie Golian, Transcriptionist
CV Court Reporting
410-382-0437

TABLE OF CONTENTS

P R O C E E D I N G S

MS. LEITESS: Your Honor, this is the State of Maryland versus Jarrod Ramos, case C-02-CR-18-1515, Anne Colt Leitess State's Attorney for Anne Arundel County.

MR. TUOMEY: Good morning, Your Honor, Assistant State's Attorney James Tuomey, T-U-O-M-E-Y on behalf of the State as well.

MR. DAVIS: William Davis on behalf of Mr. Ramos. Mr. Ramos is present.

MS. O'DONNELL: Your Honor, also Katy O'Donnell with the Office of the Public Defender on behalf of Mr. Ramos.

MS. PALAN: Elizabeth Palan, P-A-L-A-N on behalf of Mr. Ramos.

THE COURT: Thank you. I'd like to remind everybody in the courtroom that all phones are to be turned off and put away during, while court is in session. If you need to use a phone, please step outside of the courtroom to do so.

We are set today, all day, for a Motions Hearings, we have numerous motions that are pending before the Court. I'd like to start with the Defendant's Motion to Compel that was filed on May 17, State filed a Response June 5th, the Defendant filed a Response to the State's Response June 10th.

So, it's the Defendant's Motion. I'll give you a

minute if you need to get yourself together.

DEFENDANT'S MOTION TO COMPEL

MS. O'DONNELL: Thank you, Your Honor. I had a different order here. Your Honor, the first thing that I would like to raise, with regard to the Defendant's Motion to Compel Discovery, is that we had a subsequent pleading on June 10, 2019, Your Honor. Defendant's Response to State's Response to Defendant's Motion to Compel Discovery. And, the reason we filed this, Your Honor, was a request to the Court, actually, to strike the State's Response to Defendant's Motion to Compel as not being timely filed.

And, I apologize for my voice, Your Honor, I'm getting over a cold, so if you have difficulty hearing me just --

THE COURT: I can hear you just fine.

MS. O'DONNELL: Thank you. So, we filed our Motion to Compel, Your Honor, on May 17th. As Your Honor is well aware, Maryland Rule 4-263I3 specifies that, "A response to a motion to compel may be filed within five days after the service of the motion." And, not counting weekends because that's a five-day period of time that would have been by May 24th, Your Honor.

The State did not file its Response until June 5th, over nineteen days later. And, it simply is not timely filed and Your Honor, we feel that Defense is duty-bound to

request that the Motion be stricken because it does not comply with the rule.

THE COURT: State, do you wish to be heard on, I don't know which one of you is arguing.

MS. LEITESS: Sure, Your Honor, the State can still argue the substance, I believe of the Motion to Compel here in court. And, the lack of good faith efforts by the Defense. They have attached a Good Faith Pleading saying that they had done certain things, and I think that it is still appropriate for the State to be able to argue this Motion as we have met with the Court many times in the last two months.

Discovery has been an open process between the parties, and we are prepared to argue that it is not ripe at the time and that we fulfilled all of our discovery obligations to date.

So, I'd ask that the Court permit us to argue, obviously the issues of discovery. We have yet to have a motions hearing on discovery in this matter.

THE COURT: All right. I, as to the Defense Motion to Strike the State's Response, in any scenario, I would permit the State to respond to the Defendant's Motion to Compel. This has been set for a hearing. The, as I understand it from counsel and it has been represented many times in the courtroom, that discovery has been an ongoing

matter, there have been ongoing discussions between both sides. In fact, I believe at the last hearing there was a notation that many of these issues, or these issues had been resolved to the extent of forensic -- of all the forensic issues and the fingerprinting issue was anticipated to be resolved very shortly thereafter the last scheduled motion.

So, it strikes me that there have been ongoing discussions that there have been postponements, some at the behest of the Defense, others, and all appropriate. But I think it would be, really the ultimate in form over substance not to allow the State to respond. So, I am going to permit the State to response. And, so, they can either read their response into the record or argue their response. So, I think the time of filing it, it becomes moot at this point in time because I am going to allow them to respond.

All right, so I'll hear you as to the Motion to Compel itself.

DEFENDANT'S MOTION TO COMPEL

ARGUMENT

BY MS. O'DONNELL:

Oh, thank you, Your Honor. So, again, we filed our Motion to Compel on May 17th and since that time, Your Honor, I think we have received approximately fifteen, approximately fifteen supplemental discovery packets from the State. Some of that is new material but some of that

did go to fulfill requests that we made --

THE COURT: So, let me begin by asking, and the, I guess I should have said this previously. I have read all of the motions, the attachments, the relevant points in authority cited by both sides, and, so I'm prepared to that extent. But what I don't know is what remains in the Defense's Motion, and in the Defense's opinion still outstanding at this point in time.

So, if you could give me a list of what you're seeking to compel that would be helpful.

MS. O'DONNELL: Yes, ma'am. So, if you go to page two of our Motion to Compel, paragraph five, one of the sections: Section A Statements of the Defendant. This is an area that we believe has not been complied with and that is going to require a little bit of backstory here and context for the Court to appreciate what it is that we are requesting.

As a matter of fact, I've had some exhibits marked, pre-marked with regard to this and I will collect them.

(Brief pause.)

MS. O'DONNELL: So, as Your Honor is aware, of course under the rules the Defense is required, is entitled to receive from the State, Your Honor, any and all written and/or oral statements of the Defendant that relate to the

offense charged. And, all material and information including documents and recordings that relate to the acquisition of such statements.

So, keeping that in mind, what I am going to do with the list of five items under that section, Your Honor, is I'm going to collapse a few of them because they, they are easily argued together.

So, Item Number One and Item Number Two refer to an Anne Arundel County Police Department Report and Investigation in May of 2013. A Complaint filed by members of the *Capital Gazette* relating to threats and bizarre allegations and statements that Mr. Ramos made against the *Capital Gazette* primarily in Twitter type feed, in that type of a modem.

Your Honor, Number Two, which is related is an Anne Arundel County Office of the State's Attorney 2013 investigation related to these same threats and allegations and statements that Mr. Ramos made against the *Capital Gazette*.

And, first, Your Honor, I would submit to the Court what's been marked as Defense Exhibit A.

(Defense Exhibit A was then marked for identification.)

THE COURT: So, let me make sure I understand this, because I'm looking at your Page Two: Statements of

the Defendant. So, you've indicated you are combining one and two.

MS. O'DONNELL: Yes, Your Honor.

THE COURT: And, then another one which was -- was there another one, or that's just --

MS. O'DONNELL: I actually will combine, just for purposes of organization, Your Honor, I will combine One and Two.

THE COURT: Okay.

MS. O'DONNELL: I'm going to combine Three and Four.

THE COURT: Okay.

MS. O'DONNELL: And, then Number Five, I believe we will withdraw as we believe the State has satisfied.

THE COURT: All right.

MS. O'DONNELL: And, I'll put that formally on the record when we get to it. I just don't want to -- the way I've ordered them.

THE COURT: Okay.

MS. O'DONNELL: As far as Defense Exhibit A, Your Honor, what I am providing to the Court is a copy of a 2013 Anne Arundel County Police Department that's referenced in the Motion to Compel. The copy that the Defense received initially, actually, was found on the internet and was posted the very day after the shooting, I believe, June 29th,

2018 by the *Capital Gazette* itself.

We were subsequently also provided with a copy of this from the State and I will hand that --

THE COURT: And, are they marked already?

MS. O'DONNELL: Yes, Your Honor.

THE COURT: Okay. And, the State, I am assuming has no objection for the purposes of this hearing?

MS. LEITESS: No objection. But, just to clarify, Your Honor, that copy is one that was downloaded from the internet.

THE COURT: Okay.

MS. LEITESS: Not, but it, it would be similar from the one that the State provided except for the last page. The last page, the State didn't provide, that's the internet site on the last page.

THE COURT: So, I can see that there are redacted portions of what I have been given.

MS. LEITESS: Yes.

THE COURT: So, are they redacted? They were redacted?

MS. LEITESS: What the State provided too, yes.

THE COURT: Okay. So, they were re -- okay, all right.

MS. LEITESS: I don't think the redaction is any, is in controversy.

THE COURT: Okay. All right. So, I'll admit it for the purpose of this hearing and ask Madam Clerk to scan in Defense Exhibit.

(Defense Exhibit A was then admitted into evidence.)

MS. LEITESS: And, just for the record, we gave them an unredacted version supplementally, as well. We gave them --

THE COURT: Okay.

MS. LEITESS: -- a version of that redacted, and we gave them a clean copy as well without redactions.

THE COURT: Okay. Thank you.

MS. O'DONNELL: So, Your Honor, for purposes of context for the Court, I am going to ask you to look at this Police Report which again is dated May 24, 2013. And, what you'll see is that it is a report that is made by members of the *Capital Gazette* namely their Attorney Robert Douglas, a reporter Eric Thomas Hartley who is the reporter who wrote the social media commentary that Your Honor has heard about Jarrod wants to be your friend. Thomas Marquardt, if I am pronouncing that correctly who was, I believe the then Editor of the *Capital Gazette*, Pat Richardson another employee as well who became an editor later on. Your Honor, this is a report taken by an Officer Michael Praley.

And, if you turn to the second page of the Report,

you'll see, obviously, all of the logistical information with regard to each of these individuals who was raising the complaint. But, towards the bottom of the page you'll see that the narrative says, "On May 14, 2013, a conference call was arranged with Robert Douglas," again the attorney "And his client Capital Gazette Communications, LLC. Parties involved in the call are as follows: Eric Hartley former correspondent, Pat Richardson Editor *Capital Gazette Newspaper*, Robert Douglas Counsel representing the *Capital Newspaper*, and Thomas Marquardt was to join the call but failed to call in, he was a former employee of the *Capital Newspaper.*"

If you turn to page three there is a great deal of information concerning what the substance of the complaint is. The following are points of conversation: the suspect in the case is named as Jarrod Ramos. As you look down you will see that there is a Twitter account that is specifically referenced as Mr. Ramos' account. It is Eric Hartley Friend at the Twitter address. It then goes on to say, "Currently, he has no weapons registered to him." It cites the civil lawsuit Ramos versus Capital, which is the defamation lawsuit that Mr. Ramos brought against the Capital and others as a result of the commentary written by Mr. Hartley.

And, then you see Item Number Four, "Possible

criminal acts the suspect may have perpetuated: A. Harassment, B. Future possibility of violent criminal act." Now again, this is back 2013. The narrative that accompanies this Report, Your Honor, says, "During the conference call, the suspects criminal history, criminal pending case, gun ownership, and Twitter account is discussed."

There is some redaction. And, then it says, "Ramos has not registered any firearms in the State of Maryland. The Twitter account revealed the Ramos has been writing on and off again about persons described above as well as other items in the news. It appears that Ramos reads the Capital as a base for what he promotes on his Twitter account. On the multiple pages of Twitter forwarded to me by Bob Douglas, Esquire, items produced from March 24, 2013, to September 20, 2013."

And, I just make a note that this Report is dated May 24, 2013. So, the reference inside of it to Twitter's that occurred from May 24 to September 20, 2013 suggest that there are additional reports to us, Your Honor.

"Those Twitters have the most significant value. Ramos makes mention of blood in the water, journalist hell, hitman, open season, glad there won't be murderous rampage, murder career and the paper, all were fringe comments associated with events occurring in the paper and are

reflected in this, put in his Twitter. The Twitter account currently has no followers, and is best described as ranting. The Twitter account began during a failed lawsuit in which Ramos alleged defamation when persons wrote an article about Ramos harassing. The article pointed out the pitfalls of internet contact and social media pitfalls leading to harassment." There is some redaction, "Was not physically approached by Ramos only harassed by letter, email, and social media contact by Facebook. All copies of the forwarded Twitter account document have been made a part of this case file. All copies of the Twitter account documents."

"During the conference, I indicated," this is the officer speaking, "that I did not believe that Mr. Ramos was a threat to employees for the Capital. This was based on the contact that they've had with him as only on Twitter and civil court filings. He has not attempted to enter the Capital Newspaper Building or sent direct threatening correspondence. The Twitter account is his and persons must seek it out to obtain comment."

He then lists, "The following items will be investigated to give this case closure: Number One, can the Twitter account be closed by nature of its content? Two, review the information with State's Attorney's Office, SAO for possible charges. Three, forward a picture of Ramos to

the Capital for their security plan. Four, Ramos' pending criminal case involving victim," and the name is redacted, "needs to be monitored for any explosive reaction by Ramos."

And, then, Your Honor, the following page, just briefly again, says, "As of this writing," which again, is confusing because the report is dated May 24, 2013, but references up to the date of September 30, 2013. "As of this writing, the Capital will not pursue any charges. It was described as putting a stick in a beehive, which the Capital Newsletter representatives do not wish to do." And then the last line again, "A supplement will follow indicating the completion of the aforementioned investigation responsibilities."

So, this is the Report that we had in hand. All of these individuals, the *Capital Gazette*, all of the Twitter account, all of these things are statements that we feel we are entitled to have. So, we began making inquiries. We also received, and just so Your Honor has this as well, because this was provided to us in discovery by the State and this is marked, Your Honor, as Defense Exhibit B.

(Defense Exhibit B was then marked for identification.)

MS. O'DONNELL: And, for the record, what it is, Your Honor, is an FBI, I guess you would call it a Links

Intelligence Report, where the FBI is searching for police intelligence on Mr. Ramos. This was done on June 28, 2019 right after the shooting incident. And, so, the record is clear, the Bates Numbers on it that were put on by the State's Attorney's Office is 177921784.

THE COURT: Say it, can you give me those dates again?

MS. O'DONNELL: Yes, it's 177921784.

THE COURT: Okay, I understand.

MS. LEITESS: I don't know what the relevancy is for the second thing, Your Honor, but for the purposes of the Motions Hearing, I'm fine with the argument regarding it.

THE COURT: Okay. So, this is, Defense Exhibit B is --

MS. O'DONNELL: This is B.

THE COURT: -- admitted for the purposes of the Motions Hearing.

(Defense Exhibit B was then admitted into evidence.)

MS. LEITESS: It's not the subject matter of any of these filings, so…

MS. O'DONNELL: Well, actually, it is and that's why I want it to be on the record, Your Honor, because it's, and it was provided to us in discovery.

THE COURT: It was?

MS. O'DONNELL: And, I'll just very briefly --

THE COURT: Or it was not?

MS. O'DONNELL: It was.

THE COURT: Okay.

MS. O'DONNELL: On those Bates pages, by the State, and I will just refer you to very briefly, Your Honor, to page three of this exhibit. And, if Your Honor looks down, you will see, and I believe I highlighted --

THE COURT: I'm looking at page three, almost the whole thing is highlighted.

MS. O'DONNELL: Yes. So, Your Honor, this is a separate incident.

THE COURT: Okay.

MS. O'DONNELL: Okay. And, that's why I want it to stick out, so that as you, what you'll see here is that the incident that is identified on page three of Defense Exhibit B, goes back to, and I'll just read the narrative again, it's just a paragraph. "On Monday, August 27, 2012," so this is now almost a year prior to the Report that you just heard information about, "At 1233 hours, I met with Allison Borg," now this is a different police officer, Your Honor, but, "I met with Allison Borg in the police station lobby regarding a harassment complaint. Borg stated she is a reporter for the *Capital Gazette Newspaper,* and has been

receiving messages on her Twitter account that she finds disturbing. Borg advised that, in 2011, a Staff Writer, Erick Hartley, for the Gazette did a story on a subject named Jarrod Ramos of Laurel, Maryland who had been found guilty in court of harassing a female on Facebook. Borg began receiving messages from Ramos about four weeks ago. Borg writes an article called the *Watchdog* and stated that Ramos has made comments on the Twitter account that lead her to believe that he has looked at her Maryland Driver Record."

"Ramos also wrote in one tweet, 'Melinda Rice knew better pull the F'ing trigger." "Borg stated that she will be blocking Ramos from the Twitter account and has spoken to the newspaper editor about the situation. The newspaper editor advised Borg to contact police and make them aware of the online postings from Ramos. The article written in 2011 by Eric Hartley who has since quit the Newspaper and the comments made by Ramos will be placed in evidence." So again, writings of Mr. Ramos indicated here that they will be placed in evidence.

If you turn to the next page, Your Honor, and I won't re-read this because you will see that what is listed on page three, or Bates Number 1782 of Defense Exhibit B is pretty much a verbatim account of the May 2013 Police Report that we just went over. So, by virtue of this information,

Your Honor, the Defense learned that there were at least prior complaints made by reporters and members of the *Capital Gazette,* both in August of 2012 and then again in May of 2013, citing concerns about bizarre ranting Twitter feed, threatening, murderous blood baths, perhaps looking into people's records that the police were aware of. And, the indication, of course, from the 2013 Report was that the State's Attorney's Office was also made aware of.

We, then, Your Honor, and I believe this is already attached to our Motion to Compel wrote a letter to the State requesting, and this letter is dated January 24, 2019, it's already attached to the Motion, so you don't need me to give you a copy of it. But, requesting specifically a copy of the complete police investigative file related to this matter and the complete Anne Arundel County State's Attorney's case file related to this matter.

We received a response back from the State on February 28, 2019, which the State made a copy of as an exhibit on their Response. So, I believe you also have that document as already part of the record, Your Honor. But, at any rate --

THE COURT: So, hold on. I have a question. Because I'm looking at the January 24, 2019 letter, is that the one you reference that you, was from you to Ms. Leitess and Mr. Tuomey, all right, so from Mr. Davis to Ms. Leitess?

MS. O'DONNELL: Yes, Your Honor.

THE COURT: All right. Just give me a moment.

(Brief pause.)

THE COURT: And, you indicate that that letter refers to the 2012 and 2013?

MS. O'DONNELL: It refers to the --

THE COURT: Oh, wait, there's more than one letter, okay.

(Brief pause.)

THE COURT: But there are two, you've attached two letters with the same date.

MS. O'DONNELL: Oh, there might have been one related to a different subject matter, I'm sorry, Your Honor.

THE COURT: Yes.

MS. O'DONNELL: I can give you a copy of this one.

THE COURT: That's okay. I have the second one, I just --

MS. O'DONNELL: Okay.

THE COURT: -- didn't realize there were two.

MS. LEITESS: Can I see which one you are referring to counsel just so --

MS. O'DONNELL: Sure.

MS. LEITESS: -- I make sure we are on the same page.

MS. O'DONNELL: This is an extra copy, but the, it is attached to our Motion.

MS. LEITESS: Okay. And, do you have our Response to that?

MS. O'DONNELL: Yes. Well, your Response to us February --

THE COURT: The State's Response is attached to the State's, not --

MS. O'DONNELL: Yes. And, it is dated February 28, it was sent by email and e-filed Your Honor, to us. And, it is attached, as I said, as an exhibit to the State's Response to our Motion to Compel.

But, I will reference that the first section of that letter deals specifically with items, A1 and 2 in our Motion to Compel. And, what the State says to us in response to our inquiry is, "I write a Response to your letter dated January 23," it's actually dated 24, "Requesting the complete Anne Arundel County Police case number 13-719559." Which is the report number for the 2013 Report. And "State's Attorney's case filed related to this matter.

You provided me with a copy of your letter in Judge Ripken's chambers today, after I advised I had not seen the letter attached to the email you sent. I have searched our case file system and as I suspected, the Office

of the State's Attorney created no file as it was an uncharged case. However, the Office did obtain a copy of the Police Report via email from the Anne Arundel County Police Department when they emailed a redacted copy on June 29, 2018, I attached them with this letter."

That's when we actually received the second copy, because the first copy we had found ourselves, Your Honor, on the internet that the *Capital Gazette* had posted. "The original Police Report was written on or about May 24, 2013 by Detective Praley detailing his investigation of a complaint by members of the *Capital Gazette*. Ultimately, the complainants chose not to pursue any action against Jarrod Ramos, and no charges were brought. I do not know if there are additional documents regarding this case number. I will inquire of the Police Department but this may be better addressed by you serving a subpoena duces tecum to ensure that you get all relevant documents directly from the source."

Your Honor, there is more information in that, State's Response that refers to another section, but just to stay on this thread. What we did after that, Your Honor, is we filed, sent a letter to the State dated April 22, 2019, which I believe is also already attached to our Motion to Compel.

Continuing on this subject matter, Mr. Davis wrote

to Ms. Colt Leitess, “I’m following up with your letter dated February 28, 2019 discussing discovery information concerning the investigation by the Anne Arundel County Police Department into complaints by members of the *Capital Gazette* of alleged threats made by Mr. Ramos in May of 2013. Per your letter, the original Police Report was written by Detective Praley, and had an Anne Arundel County Police case number 13-719559. Detective Praley’s Report indicates that, ‘Copies of Tweets with the alleged threats were placed in the case file.’ Your letters say, ‘I do not know if there were additional documents regarding this case number, I will inquire of the police department.’ Also, we suggest that we file a subpoena duces tecum for their case file.”

“In the past, when filing a subpoena for similar type police department records we received correspondence from the Police Department that the subpoena is improper and that we need to go through the State’s Attorney’s Office as they consider this discovery. Can you please advise us as to whether or not you’ve been able to make the inquiry of the Police Department, and if so, their response?”

(Defense Exhibit C was then marked for identification.)

Your Honor, I might add that was April 22. At the same time, because we wanted to be as thorough as possible, we did file a subpoena with the Anne Arundel County Police

Department. And, this is, for the record, Your Honor, Defense Exhibit C and it consists of the Affidavit of Thomas K. Lancaster an investigator who served the subpoena and the Subpoena itself.

THE COURT: No objection from the State for the purposes of hearing?

MS. LEITESS: It's fine with the State, Your Honor, thank you.

THE COURT: Thank you, that's Exhibit C, it's admitted.

(Defense Exhibit C was then admitted into evidence.)

MS. O'DONNELL: Your Honor, you'll see that the Subpoena, again, specifically requests that, "The Anne Arundel County Police Department produce the following documents, items, and informations any and all records related to case number 13-719559 Jarrod Ramos included but not limited to incident reports, investigation reports, investigative notes, witness statements."

So, what we received back, Your Honor, from the State on April 29, April 29, 2019, I have in the form of an email that is Defense Exhibit D.

(Defense Exhibit D was then marked for identification.)

MS. O'DONNELL: Which I'm showing to the State, at

this time

THE COURT: And, the date of the email?

MS. O'DONNELL: The date of the email, Your Honor, is April 29, 2019 at 2:49 p.m. And, it's simply a note from Ms. Colt Leitess.

THE COURT: No objection from the State? No objection?

MS. LEITESS: No objection, Your Honor.

THE COURT: Admitted for the purpose of this hearing.

(Defense Exhibit D was then admitted into evidence.)

MS. O'DONNELL: It says, "Bill, Liz, and Katy, below please see the email from Detective DiPietro," who is the lead detective in this case, Your Honor. "In reference to your inquiry on the Police Report 2013-719559 via your letter of April 22. We will formally respond to your letter shortly."

And, then what she has attached, you'll see on the second page, Your Honor, is a brief email from Detective DiPietro to the State which says, "Greetings, Sergeant Jay Price pulled the box from Iron Mountain that would contain the case file if it existed. This morning, I searched the box, that case file was not in it. At this point, it appears there is no case file for the aforementioned case.

If you have any questions or concerns, feel free to contact me." I believe it says.

So, at that point, Your Honor, we once again wrote yet another letter saying, you know, we do not believe that was sufficient that Detective DiPietro, since he looked at a box and said it's not there. So, we sent a letter of May 3, 2019. I believe that is also attached to the Motion to Compel. In that letter, Your Honor, we simply said that we were in receipt of the State's email of April 29, indicating Detective DiPietro's inability to locate the police investigative case file. We requested the following information be provided to us immediately: Number One, a full description of Detective DiPietro's attempts to locate the police investigative file. Listed a series of questions regarding the file box, the records, how these records are stored, and how it would be removed from the file records.

And, Two, a full description of the additional records that Detective DiPietro intends to undertake to locate this investigative file rather than just looking in the box.

And, again, we referenced the fact to the State that this was published immediately by the *Capital Gazette* the very next day, so clearly, they had it. The police report documents, complaint report file and substantive information were supposed to --

THE COURT: Well, clearly, they had the --

MS. O'DONNELL: The Police Report.

THE COURT: The two-page Report?

MS. O'DONNELL: The, I believe it's a four-page Report.

THE COURT: Four-page Report.

MS. O'DONNELL: But, yes, they clearly had the four-page Report. We suspected if they kept that they would probably have also kept copies of the documents that they provided to the police, the Twitter feed, the documents that they referred to. But, that's what we were inquiring about.

THE COURT: Okay.

MS. O'DONNELL: In addition, since that Report says that all of this information was discussed with the State's Attorney's Office for consideration of possible charges, well, you know, do you have these documents as well?

So, Your Honor, that was on May 3rd. We did receive from the State a formal discovery packet on May 22nd, which I have, it's Defense Exhibit E, Your Honor.

(Defense Exhibit E was then marked for identification.)

MS. O'DONNELL: This is May 22, 2019, and what it consists of is the cover letter from the State's Attorney's Office with regard to the items that are in the discovery

including a letter from the State's Attorney regarding this as well as two additional Reports from Detective DiPietro dated May 20, 2019, and the one dated May 21, 2019.

MS. LEITESS: I think you may have two copies attached in the Report.

MS. O'DONNELL: It's confusing, Your Honor. The State is saying to me, I made two copies attached to this. I think it's because -- and, Your Honor, this is, for the record Defense Exhibit E.

THE COURT: No objection, State?

MS. LEITESS: No objection, Your Honor?

THE COURT: It's admitted.

(Defense Exhibit E was then admitted into evidence.)

MS. O'DONNELL: There are two identical Reports from Detective DiPietro in this Supplemental Discovery Packet. The only difference that I could ascertain between the two is that one happens to be dated May 20, 2019, and one happens to be dated May 21st. So, perhaps the State received both of them and included both of them, I don't see any substantive difference between them other than that.

But, what you'll see if you look at Defense Exhibit E, Your Honor, is that the State basically responds by their letter, and I'm just summarizing their last paragraph of the second page of their letter simply because

it sums it up, “Between the State’s February 28, 2019 correspondence which was in response to your January 23, 2019 letter, Detective Praley’s Police Report for 13-719559, which was previously provided in discovery and Detective DiPietro’s subsequent efforts which are attached, your inquiries into this matter have been answered.”

Well, when you look at Detective DiPietro’s Reports, Your Honor, and as I said, it appears that there is two of them, basically it just summarizes that he received the subpoena on April 24, 2019, that was issued by the Circuit Court for Anne Arundel County for the records. And, then he proceeds to say that “On Saturday, April 27th, 2019, at approximately 2019 hours I sent an email to Sergeant Jay Price requesting him to retrieve the box that contained the 2013 *Capital Gazette* file involving Jarrod Ramos. He advised me the box had already been ordered and was currently at Southern District.” And, he goes on to say, “The box was sealed by packing tape.” We don’t know, I’m not sure why it had already ordered or pulled, but it was sealed with packing tape. And, then he goes on to say, “On Monday April 29th at approximately 1500 hours I checked the Anne Arundel County Police Department’s property evidence management system the case file has never been logged and no additional information was obtained.”

And, then he proceeds to say that, “On Friday, May

3, 2019, at approximately 1930, I searched an inventory box 967750408 *Capital Gazette* file was not located. The following are the results of the inventory in order as they were filed in the box." And, he then lists 90, 102 files by number that are not the file was are looking for. I suppose just to inventory what was in the box that the file should have been in.

He then goes on, Your Honor, importantly to say, "On Monday," and I'm now looking at page 6 of 7 of his Report, "On Monday, May 6, 2019 at approximately 1253 hours I spoke with Detective Praley who is retired. He advised me that when the 2013 incident was reported he did create a case file associated with his investigation, he added that he never contacted or spoke with Jarrod Ramos, due to the fact that the management from the *Capital Gazette* did not want to pursue a criminal complaint. Detective Praley, again retired, could not recollect if there was any type of social media postings that were contained within the case file." But, we know that his Police Report indicates that they were.

"Upon concluding his investigation," and that's an important word as far as the Defense is concerned, "Upon concluding his investigation, he turned the case file over to archives pursuant to Departmental rules and regulations. He says he never took paperwork home. He doesn't know the

current location of the case file. On Monday May 6, 2019, at approximately 1302 hours, I contacted the custodian of records for the Anne Arundel County Police Department Ms. Christine Ryder. I advised her of my attempts to locate the case file. She advised she had her staff conduct additional searches in an attempt to locate the case file. Specifically, her staff pulled fifteen additional boxes that were archived around the time that this box, #967750408 was filed. Upon searching those boxes, the case file was not located. I requested her to provide me with the chain of custody. The Report then concludes by saying on Tuesday, May 21st, at approximately 811 hours, Ms. Ryder emailed me the chain of custody for that box. The form indicates the box was created on January 10, 2016."

Again, something that drew our attention -- the box for the May 2013 complaint was created on January 10, 2016, three, two and a half years later. Which suggests that there was either ongoing investigation, ongoing file, continued monitoring of Mr. Ramos as Officer Praley's initial Report indicates that that is one of the items he thinks should be done. A supplemental report, somehow two and a half years is passing before this is even getting archived according to this.

The box was then sent --

THE COURT: That's just when they send stuff to

Iron Mountain.

MS. O'DONNELL: Right.

MS. LEITESS: Exactly.

MS. O'DONNELL: What happens?

THE COURT: Is that just when they send stuff to Iron Mountain? I, I --

(Defense Exhibit F was then marked for identification.)

MS. O'DONNELL: No, it says the box was sent to Iron Mountain on January 13, 2018, only six months before the shooting, five months before the shooting. So, it's not even sent two years later. So, I don't believe it does. I think it indicates when it was actually closed and filed.

Which suggests to us that we've got an investigation going on for two and a half years which is actually, again, consistent with the Report itself what references a September date and tweets that -- an initial Report in May, but it looks like they are evaluating tweets and threats from Mr. Ramos for violent behavior that the most serious ones go from May to September.

Again, Detective Praley's suggestion for a supplemental report monitoring of his behavior as well as connection with the State's Attorney's Office considering whether to file, charges should be filed.

So, all of this suggests to us that there is a

great deal more information out here, with regard to this statement of our client and this ongoing vendetta with the *Capital Gazette,* that ultimately related and resolved in this incident on June 28th.

Your Honor, the State however, as you will recall in their Response simply said you've got everything. So, what we did find, and we had filed, by now we filed our Motion to Compel, May 17th, which is when we filed. Even after that, because specifically in their response they said we want Defense to make attempts, good faith attempts to resolve this. You know, we want them to come to us and make good faith attempts which we thought we had. But, tried one more time and we wrote a letter on June 12, 2019 which is Defense Exhibit F, which I've shown to the State at this point that was filed on June 12, 2019.

And, what we did in this letter, Your Honor, is we set forth with specificity what our understanding was of what the State was, explanations for all of this, despite all of the confusing dates and the contrary inconsistent, what we thought documentation. This letter, which, again, is Defense Exhibit F.

MS. LEITESS: We are going to need a minute, Your Honor, on this one to see if it's the same, because the type is different from our -- our copy.

MS. O'DONNELL: I can give you a copy of the

letter.

MS. LEITESS: Oh, I want to see our copy that we received, because this is --

MS. O'DONNELL: This is the one that was e-filed so…

MS. LEITESS: Yeah. The type just looks different from ours. So, let's, we just need a moment, Your Honor.

THE COURT: Sure.

MS. LEITESS: You can, introduce it subject to --

MS. O'DONNELL: I'll take this one and you take this one.

MS. LEITESS: Well, I want to see this one because, the one that you wanted to give to the Court. I'd like to see that one, thank you. I just need a minute, Your Honor.

(Brief pause while State reviews proposed Exhibit.)

MS. LEITESS: No objection.

THE COURT: All right, so you have no objection to F?

MS. LEITESS: No objection, Your Honor.

(Defense Exhibit F was then admitted into evidence.)

MS. O'DONNELL: And, Your Honor, just for the record, I'll note at the top of Defense Exhibit F does

actually have the e-filing time stated on it to show that this is the version that was filed.

So, Your Honor, this letter was our attempt, again after the State's invitation, generally, on, in the issue with Motion to Compel to try to resolve. And, what we did with this letter, Your Honor, is set forth, what is it that we want to know. What is it specifically that we want to know?

And, we begin, Your Honor, on page one by saying, "Based upon the discovery materials provided and upon the State's prior representations Defense counsel believes the following statements to be consistent with the State's position and/or assertions with regard to Police Report #13-719559. We just wanted to make" --

MS. LEITESS: Your Honor, Your Honor, I would object. May we approach the bench, please?

THE COURT: You may. Mr. Ramos, you have the right to be present at any bench conferences that you wish to be at. And, you have the right to discuss with your counsel and for them to advise you whether or not you wish to be present at bench conferences. I'm not going to advise you every time there is a bench conference that you have the right to be present. And, if you choose to remain where you are, I will conclude that you have made the decision to remain there understanding that you have the right to be

present. Do you understand that?

THE DEFENDANT: I do.

THE COURT: Okay.

(Counsel approached the bench and the following occurred:)

MS. LEITESS: Your Honor, I'm not sure why counsel is reading every single part of it. Some of the information that they have said in there is extremely inflammatory and inappropriate. It's more along the lines as if you were sending interrogatories to a witness or a party in a case and accusatory in nature. And, obviously, it's an exhibit, Your Honor can read it. But, I think reading it out loud is very, very outrageous because it is literally trying to make the State a party to information that they are trying to get on a five to six-year-old investigation about Twitter, about public comments.

THE COURT: Um-hmm.

MS. LEITESS: I mean, if we, if we wrap up exactly what is in this Police Report is Mr. Ramos said things on Twitter and people from *The Capital* were worried about it. That's the report. And, so, what they've done is instead of investigating themselves and interviewing witnesses who were a party to that complaint and doing good old fashioned shoe leather investigation they are putting the onus on the State and saying did you do this, why didn't you do this, what did

Praley think, what did -- instead of actually interviewing Detective Praley or interviewing the witnesses. And, there's inflammatory and accusatory things in there basically, basically shifting the burden on the State as if the State has done something wrong. That the reason the Defendant, you know, committed certain acts is because the State failed to do things. And, a lot of it is false, and a lot of it is misleading.

THE COURT: Um-hmm.

MS. LEITESS: And, I'm asking the Court not to permit it to be read out loud. Your Honor can read this. It's going to be part of the record. But, there are accusations in there. And, there's even characterizations that are just dead wrong in what the Tweets are, who said what.

One of the examples is the raping of Judge Miller's daughter. Somebody made that assumption in a pleading, Mr. Brendon McCarthy made that assumption, thinking that Mr. Ramos was talking about raping Judge Miller's daughter. But, he wasn't, he was talking about somebody else, he was calling somebody evil Tom, somebody who worked at the *Capital*.

So, there's all this inflammatory stuff, "blood in the water", "open season", and if you read the Tweets, which are all public record, just like the Police Report, Mr.

Ramos uses words that other people in the litigation use. "Open season", "Blood in the water", he uses, the people from the *Capital Gazette's* words, and he puts them in his Tweets.

So, for the Defense to be able to read this inflammatory, accusatory against the State letter out loud, I think is outrageous. And, we responded, and I have our Response, June 21st to this. And, what this, what we've been talking about --

MS. O'DONNELL: I feel like we are getting into argument here, that --

MS. LEITESS: What we are talking about for an hour, Your Honor, is whether or not the State has complied with discovery for statements of the Defendant and turned them over. And, what we are getting into now, here Your Honor, is this attack on the State. She wants to make a good faith argument that she's tried to get the State to give her, she has the letter, and I think then we get to are Tweets that somebody made five years ago, statements of the Defendant that pertain and relate to the 2018 murder.

THE COURT: So, let's, let me back up. Well, let me let you respond.

MS. O'DONNELL: Thank you, Your Honor. First of all, I think the State has gotten into argument that we are not quite ready for. This letter constitutes our specific

itemized requests for information from the State.

THE COURT: Um-hmm.

MS. O'DONNELL: All of which, by the way, came from discovery materials either provided by the State, including the comment with regard to Judge Miller's daughter, which I think is in one of the questions here. There's nothing inflammatory, these are very factually based questions, very specific questions. And, quite frankly, the State, in their response, answered of the twenty questions here or however many there are answered three of them.

We are specifically going to be asking this Court to rule on our being entitled to the answer to the other seventeen questions.

THE COURT: All right.

MS. O'DONNELL: So, it cannot be --

MS. LEITESS: So, here's the problem, June 12th is not the Motion to -- this is not part of the Motion to Compel Discovery. This is a Motion --

THE COURT: So, I'm just -- let me stop you right there. We are set for one day today.

MS. O'DONNELL: At least five with multiple (Inaudible word).

THE COURT: Hold on, hold on, let me talk now.

MS. O'DONNELL: Okay.

THE COURT: It's my turn. Seven motions set for

today. And, an eighth Motion that we need to now set a hearing date for. We are on the first motion, we are -- hold on, it's my turn to talk. Everybody wants to talk. We are an hour in. We have addressed exactly of the Motion to Compel the request is made for statements of the Defendant. There are five listed. That's the first thing, we are on the first two of the first thing.

There are then, so total motion to compel areas 1, 2, 3, 4, 5, 6, 7, 8, 9, and it's every area of discover that you've listed here. So, at this rate -- hold on, I'm going to let you go and respond.

MR. DAVIS: Okay.

THE COURT: At this rate, we need two weeks of motions hearings. And, nobody, in any way, shape or form suggested to me that this Motion, itself, was going to take probably the bulk of the day, if we could even get it done in a day.

MS. O'DONNELL: And, Your Honor, I appreciate the Court's comments, and you did honestly happen to pick the one lengthy section of this. The rest of the Motion will be way, way, way quicker. All of the other motions will be way quicker. But, you happened to select as the very first motion to hear, this one section which is a very significant section because it involves the entire history of Mr. Ramos' relationship with the *Capital Gazette* and his specific

threats and statements to --

THE COURT: Okay. So, here is what I hear that you are asking for. I hear that you are, and I'm listening carefully, I'm reading every word. I've read every word. You want the information from the 2013 incident and the related documents. And, then there's one that's referred to in 2012, and you want any investigation and related documents.

So, my question is, what have you done to ask for it? It's clear to me you've done your due diligence in requesting that information. You've laid it out and made it abundantly clear there are multiple letters making that request. I hear you loud and clear.

I would, I think I understand, although, I haven't given the State a response, an opportunity to respond yet because you are still arguing.

MS. O'DONNELL: Yes.

THE COURT: That the State believes that they've made good faith efforts to locate. I haven't heard anything about the 2012 yet. But, the 2013 documents, and they have been unable to locate those documents.

So, tell me where you think that leaves us at this point in time. That's what I want to hear. I do not, and quite candidly it's the whole, it can be argued that, if you read this information right now, it would be inflammatory to

the State. It may be equally argued that it would be inflammatory towards the Defendant, the words that he used. But, I don't think that that is necessary in terms of me making the decision as to what the State is required to do in turn, what they are required to turn over and what they are required to do to locate the information and what steps are, they are required to disclose in terms of their attempts to locate that information. I agree with you -- well, let me.

MS. O'DONNELL: You asked several questions in there.

THE COURT: Okay.

MS. O'DONNELL: Let me try to cover a few of them.

THE COURT: Okay.

MS. O'DONNELL: First of all, you asked, "What steps have we taken"?

THE COURT: No, no, no I didn't ask what steps.

MS. O'DONNELL: Oh.

THE COURT: I said it is clear to me what steps you have, the Defense has taken --

MS. O'DONNELL: Okay.

THE COURT: -- in order to obtain those documents. I'm reading your letters, I hear you. It is clear to me what you asked for. It is clear you asked for it several times. It is clear that the State made attempts to locate

that information. Whether or not those attempts are satisfactory, I believe that's an issue for the Court to decide. What information they are required to disclose to the Defense regarding those attempts and what further attempts they are required to make I believe is an issue for the Court to decide.

The, I believe that the, you've shown me plenty of information that confirms that the Defense has laid out the information that they are, that you are seeking. So, I am not asking you to, for, to show further good faith attempts, they are there.

MS. O'DONNELL: Okay.

THE COURT: I think we can all agree that you have asked clearly for that information.

MS. O'DONNELL: So, so what it comes down to, at this point, Your Honor, and you'll see again by Defense Exhibit, I believe it is F in our letter, is we tried on page one to just confirm, you are telling us no file exists from the Police Department. You are telling us no file exists from the State's Attorney's Office. But, you are telling us that you have institutional knowledge of some of these things.

And, we also know that Detective DiPietro interviewed Officer Praley. And, so, we, as a result of that on page two, listed very specific questions: "Were the

follow-up steps taken by Officer Praley in the Police Report?" "Was the information conveyed to the State's Attorney's Office?" "If so, to who and what did they determine?" Number Three, "Was the pending criminal case involving Zondervan monitored for the two and a half years it looks like it was for any explosive reaction as the Police Report indicates?" "Was a supplemental police report ever filed?" Does Praley know, because that's not -- Praley, excuse me --, isn't referenced, whether -- he just says he concluded the investigation. Which suggests to us he took all these steps.

THE COURT: Um-hmm.

MS. O'DONNELL: But, DiPietro doesn't ask him any of those, what did you do? Did you keep it open for two and a half years, did you interview and monitor the Sondervan situation? Did you go to the State's Attorney? He, he specifically doesn't get any additional information. And, the relying on saying we don't have the physical file, sorry.

But, they do have institutional knowledge, and people who, with that information, both the law enforcement office and in the State's Attorney's Office. So, these questions are very straightforward. They are not the slightest bit inflammatory. The State, in its Response, which I will be offering as an Exhibit, Your Honor, I have

it back at the ranch over there, which will be Exhibit E, F, G. They do in their June 21st --

THE COURT: Well, I'm going to have to hold argument here.

MS. O'DONNELL: Right. I mean.

THE COURT: I don't think it is necessary to have the argument at the bench. What I'm asking you to do is direct your argument to, what are you asking for? So, what you are asking for, I want you to tell me.

MS. O'DONNELL: And, I want --

THE COURT: But, I'm going to let you do it back there.

MS. O'DONNELL: Okay.

THE COURT: And, then, we are going to allow the State to respond. And, then we are going to move on to the next area, and then --

MS. O'DONNELL: And, I do guarantee, Your Honor, that this is the lengthiest part of any of --

THE COURT: Did we all hear that promise?

MS. O'DONNELL: Yeah.

MS. LEITESS: Here's the problem, she's going to reference her specific questions. And --

THE COURT: I can they --

(Inaudible few words, speaking over one another.)

THE COURT: Hold on.

MS. LEITESS: But, there's no, there's no Maryland Rule of Discovery that compels the State to answer the questions she's just asked.

THE COURT: Right. So, you are going to say that.

MS. O'DONNELL: Then the Court is going to rule.

THE COURT: I'm not saying right because I agree with you. I'm saying right because that is your argument.

MS. LEITESS: Okay.

THE COURT: So, then I'm going to make a ruling regarding that. But I, what I want to be clear is that I believe that I understand what the Defense is asking for, at this point in time, although it's my first time seeing the specific --

MS. O'DONNELL: Yes.

THE COURT: -- request. Now, so you do not need read all --

MS. LEITESS: And, just so the Court --

THE COURT: Hold on. Don't talk when I'm talking, please.

MS. O'DONNELL: It's already marked, because I'm going to be putting --

THE COURT: Okay, nine. Nine. There are nine questions. You do not need to read them, all right? I got them.

MS. O'DONNELL: So, I will reference them so the

record is clear.

THE COURT: You can --

MS. O'DONNELL: But, I don't --

THE COURT: -- you can reference them, you do not need to read them, I'm, I don't mean to be offensive to anybody. But, I admitted it into evidence and I can read it.

MS. LEITESS: Okay, thank you, Your Honor.

THE COURT: Thank you.

MR. TUOMEY: And, Your Honor, I -- the Court referenced --

THE COURT: Hold on.

MR. TUOMEY: -- an (inaudible word) Motion. And, I just wasn't sure what the Court was referencing.

THE COURT: Oh, what I was referencing is the Defendant's Motion for a Subpoena for the Production of Tangible Evidence.

MR. TUOMEY: Okay.

THE COURT: We didn't know if the State would be filing a response, I just want to address that at some point.

MR. TUOMEY: Okay.

THE COURT: Because I need to know if I need to get that scheduled because I don't think if it needs to be scheduled that it ought to wait until October 1st.

MS. LEITESS: Oh, you mean the ones that they just filed on all the --

THE COURT: Yeah, there are four of them.

MS. LEITESS: -- people (inaudible few words).

THE COURT: That I have received.

MR. TUOMEY: And, the, and I apologize, Judge. Does the Court have Exhibit C and D in front of it or is that --

THE COURT: No, the only, I handed up them all to Madam Clerk so that the, she can scan them in, the exhibits.

MR. TUOMEY: Maybe Ms. O'Donnell has them. I think I might have --

MS. O'DONNELL: I'm sorry, I missed what you said about the Motions for Tangible Evidence.

THE COURT: I just, what I said is I just want to address whether or not we need to set that for a hearing at this stage. And, objection, or no objection, if I need to schedule it.

MS. O'DONNELL: Well, the State has not responded. They have five days to respond, they have not done so.

THE COURT: Okay.

MS. O'DONNELL: So, we are going to be requesting that those subpoenas be issued. In fact, the State's responses go to the source of these people. These are subpoenas to McCarthy, to Robert Douglas, to the Capital, if

they don't have the records --

THE COURT: So, by the way.

MS. O'DONNELL: Yeah?

THE COURT: I think that they could file responses.

MS. O'DONNELL: They could.

MR. TUOMEY: Yes.

THE COURT: So, the question is, do I need to get something scheduled now?

MS. O'DONNELL: Right, if they object.

THE COURT: In anticipation. We can always take that --

MS. LEITESS: Well, I think it would be a good idea, Your Honor, to schedule something quickly.

MR. TUOMEY: And, (inaudible few words) for that. I just wanted to note that (inaudible few words). I apologize.

THE COURT: Mr. Tuomey. All right, so, somebody asked me about --

MR. TUOMEY: So, C and D, I just wanted to make sure.

THE COURT: I've got A, B, C, D.

MR. TUOMEY: Can I actually see them, please, Your Honor?

MS. O'DONNELL: You should have up until F at this

point.

THE COURT: C and D, right?

MR. TUOMEY: Yes, Your Honor.

THE COURT: You want to see?

MR. TUOMEY: Thank you, Your Honor.

THE COURT: And, F, I don't know if, did I -- did you scan F in?

COURT CLERK: I scanned all of your -- all of them.

THE COURT: I just gave, did I give you F? I might not have.

COURT CLERK: She gave it to me earlier, they are all scanned.

THE COURT: Okay. Oh, they are all scanned. Okay. Were they all scanned before?

COURT CLERK: No.

THE COURT: No?

COURT CLERK: They were doing it (inaudible few words).

(Brief pause.)

MR. TUOMEY: Thank you, Your Honor.

THE COURT: And, then, this is going to be State's #1.

(Conferring about exhibits.)

THE COURT: Well, we are going to have argument

back there.

MS. LEITESS: Sure, okay.

MR. TUOMEY: Thank you, Judge, I appreciate it.

THE COURT: Okay, thank you.

(Counsel returned to trial tables and the following occurred in open court:)

MS. O'DONNELL: Your Honor, give me just one moment here to --

THE COURT: Certainly.

MS. O'DONNELL: -- grab my documents in the right order here.

(Brief pause.)

MS. O'DONNELL: Your Honor, in light of the discussion at the bench, and again referring to Defense Exhibit F, which is Defendant's June 12, 2019 letter to the State what was also docketed on June 12th at 1:43 p.m., as we said, if we are accepting the conclusions drawn on page one that there is no file that can be found by the Anne Arundel County Police Department and there is no file that exists in the Anne Arundel County State's Attorney's Office.

We then prepared a list of nine questions, Your Honor, which are very clear-cut, factual questions regarding what we believe is in the institutional knowledge of both the law enforcement, Anne Arundel County Police Department and the State's Attorney's Office with regard to what

subsequent steps were taken by those two agencies during the course of this investigation.

And, I'm not going to read these to Your Honor because you have enumerated specifically in front of you in the letter. But again, each one of them is a very specific factually oriented question. Was there a supplemental police report made? What were the steps enumerated in Officer Praley's Report actually ever taken? What information was given to the State's Attorney's Office and to whom? Those kinds of things.

Your Honor, the State did respond to this letter. Which we did, again in good faith as an attempt clarify exactly the information that we believed we were entitled to. And that is Defense Exhibit G. Which is the State's Letter.

MS. LEITESS: We could make that a joint exhibit, Your Honor, State's #1 and -- or, but the one that we just had premarked was State's #1, so that's signed.

THE COURT: Okay. So, for the moment, I'm admitting Defense Exhibit G.

(Defense Exhibit G was marked for identification and admitted into evidence.)

MS. LEITESS: Okay, thank you.

THE COURT: Which, I'll note that the State had

intended to admit as well.

MS. O'DONNELL: And, Your Honor, I also don't need to read that letter to you. But, basically, summarizing the State's Response they are simply saying that they have given us what they have and suggest that we go out and interview these witnesses ourselves. And attempt to get this documentation ourselves through our own investigation and through the witnesses directly from the *Capital Gazette*. Which as I referenced at the bench is the subject of Motions for Tangible Evidence directed at Robert Douglas, Rick Hutzell --

MR. DAVIS: Hartley.

MS. O'DONNELL: Brennan McCarthy and Kathleen Kirchner which have been filed with the Court. So, that is the State's suggestion as to how we should receive this information. They decline to answer any of our inquiries except, and I will just point the Court on June 12th, the June 12th letter. They do reference paragraph four which our question is: "Was there a supplemental police report filed to Police Report 13-719559 and if so when, who?"

They seem to say: "As far as your fourth enumerated paragraph, the State has provided Detective DiPietro's Report that you reference. No supplement was filed." I do not know, Your Honor, whether that means no supplement was filed under that number because they couldn't

find it. Or whether they are factually saying to us, we spoke to Officer Praley and everyone else concerned in this investigation up until January 2016 and we know that nobody ever made a supplemental police report. So that is one issue we are requesting clarification on.

The only other two things that they responded to, Your Honor, that they were inclined to answer is paragraph seven. In paragraph seven of our letter, we ask for the Twitter messages attributed to Mr. Ramos, those are his statements. And we are saying, that the only ones that have been provided to us by the State in discovery are in 2015 and 2016. And yet, all of these other materials indicate that the statements of our client with regard to Twitter and the *Capital Gazette* go back to 2011, '12, '13, '14. And so, we are asking for those Twitter messages. Those are statements of our client that we believe if they have, we are entitled to.

Their response is: "As far as your seventh enumerated paragraph on page three, the State provided the Defense copies of all the Twitter records it received from law enforcement." And again, "It received," that means you gave us what you got, 2015, 2016. We know these reports indicate they were given Twitter messages from back in 2012 as well as 2013. And then again --

MS. LEITESS: Objection. Objection.

MS. O'DONNELL: The report indicates that those were provided.

THE COURT: Hold on. There is an objection, I'm going to rule.

MS. LEITESS: Counsel just said that we know that the State was given the Twitter records. That is an incorrect statement. And I move for it to be struck.

THE COURT: All right. I'm going to take --

MS. O'DONNELL: I said that law enforcement was given the records.

THE COURT: I'm going to take it all as argument right now. So, I'll overrule it to that extent. I'm not taking it as a factual statement. It's the Defense's position. So, I'll hear you.

MS. O'DONNELL: The State's then response, Your Honor, is simply to say: "Should you wish to view additional records from your client's public Twitter account," and the account has been shut down, Your Honor and was immediately. "You may wish to subpoena them directly from a third party. Or view them online where they are readily available in numerous forms dating back to 2011." Which we have not found to be the case.

Again, our position is we have looked for them. We have not been able to ascertain that we had them all. If you have them you must give them to us. And that Answer is

very ambiguous as to whether they have them and they just don't think we are entitled to them. We think that we are and we ask the Court to rule that we are.

Lastly, Your Honor, paragraph eight.

THE COURT: I have a question for you as a result of that. Is there some suggestion anywhere that the State has these Twitter statements, if you will, from either 2012 or 2013 in either their possession or the police possession? Something they have told you that suggests they have them and have concluded that they will not turn them over?

Or is it the information that you have been provided that they can't locate them?

MS. O'DONNELL: I feel like what we've been told, and again, we are seeking clarification.

THE COURT: Right.

MS. O'DONNELL: I feel like what we've been told is we can't locate a file. Here's a file number, we can't locate that.

THE COURT: So, is if your, you don't, you are not suggesting to the Court that you believe that the State or the Anne Arundel County Police Department has in its possession and is aware that they have in their possession those Twitter documents and they are refusing to turn them over to you? You are not suggesting that, right?

MS. O'DONNELL: Let me say, I, it's not the way

Your Honor is stating it.

THE COURT: Okay. Well, I just --

MS. O'DONNELL: When you say that they are aware --

THE COURT: -- because it could be taken several different ways, what you are arguing.

MS. O'DONNELL: I, let me try to make it very clear. I do not know because the State has declined to answer except to say that we are not entitled to it, whether the State has Twitter records from 2011, 2012, 2013, 2014. The Response I read that's very carefully responded to is, "We gave you what we received from law enforcement". That does not mean that they do not have them. So, we are asking for a representation on their part as to whether they have them.

If they do in fact have them, we believe we are entitled to them.

THE COURT: All right. So, this one's easy. Do you have them, Ms. Leitess?

MS. LEITESS: So, this is a complicated question or answer because we have provided the Twitter records that we have in various forms. But I cannot attest that they are the complete Twitter record because we've gotten some from police which we gave, FBI.

THE COURT: Right.

MS. LEITESS: And we've given, more recently we were able to find, we've given them civil cases that Mr. Ramos was involved in that have Twitter records.

THE COURT: So --

MS. LEITESS: And most recently, just a few days ago --

THE COURT: I think you are misconstruing my question.

MS. LEITESS: Yeah.

THE COURT: My question is: Have you given them all the Twitter messages that you have in your possession?

MS. LEITESS: To date, yes.

THE COURT: Okay.

MS. LEITESS: And the most recent, but I want to clarify, Your Honor, the most recent is that we found a civil case from Prince George's County that apparently Mr. Brennan McCarthy had attached a couple years of Twitter printouts in a Motion, in a filing.

THE COURT: Okay.

MS. LEITESS: We just gave that, because we just realized that he had done that. Now, why that's important though to distinguish is that we aren't representing that that is the entire 896 or so Tweets that Mr. Ramos ever did during his lifetime. So, we can't say that these are all the Twitter records that exist.

THE COURT: That's not my question.

MS. LEITESS: Right. We've given them what we have.

THE COURT: I recognize --

MS. LEITESS: Yes.

THE COURT: -- and I think everybody's going to recognize that Twitter is not a State agent.

MS. LEITESS: It is not.

THE COURT: And that you do not necessarily have all of those documents at your fingertips.

MS. LEITESS: Right.

THE COURT: The question that I had was what you have in terms of the Twitter documents, first of all, have you done your due diligence in searching your records to locate those. And all that you have located, have you turned over. And all that have been located by the police, have they been turned over?

MS. LEITESS: Yes.

THE COURT: Okay. That is my question. Not what else have you done outside of --

MS. LEITESS: Right.

THE COURT: -- what is in the possession of a State agent.

MS. LEITESS: Right.

THE COURT: That's not my question yet.

MS. LEITESS: Right.

THE COURT: It may be a question at a later point. But that's my question. So, does that answer the Defense question in that regard?

MS. LEITESS: But, of course, I would preserve whether or not we are even obligated to do this.

THE COURT: That is a different question.

MS. LEITESS: Okay. Just as long I get to argue that.

THE COURT: That's, you're, I'm going to give you a chance to be heard.

MS. LEITESS: Thank you.

THE COURT: I just wanted to make sure that I understood correctly, because I think I understand the Defense's questions. Are you objecting to turning over certain things or have you turned over what you have? And what I'm hearing is that you've turned over what you have.

MS. LEITESS: Right.

THE COURT: Now, the next question is what are you, what is the State obligated to do from that point forward?

MS. O'DONNELL: And launching, Your Honor, off of what you just said, because you reference due diligence, has the State, you know, performed its due diligence in order to find these things? And I will reference, Your Honor, our

question number eight, directly goes to the August 2012 *Capital Gazette* complaint raised by Ms. Allison Borg with regard to disturbing Twitter feed. And, since our June 12th letter, we have in fact received from the State and this is Defense Exhibit H.

(Defense Exhibit H was then marked for identification.)

MS. O'DONNELL: Which is a cover letter from the State and Defense Exhibit I.

(Defense Exhibit I was then marked for identification.)

MS. O'DONNELL: Which is the information that was contained in the discovery packet. We would submit those at this time, Your Honor, because in fact what they are is that on June 20th we were now given a copy of an Annapolis City Police Report 201200004629 and fifteen pages of a Police Report and Twitter documents specifically highlighted with concerns that Reporter Allison Borg had about threats that Mr. Ramos made. So, you'll see that that contains the exact type of statements that we are requesting the State exercise due diligence to find.

And it has taken all of thread that we just recited to come to June 20th when we finally got additional Twitter feed at least from 2012 that was in the possession of law enforcement that our statements of our client that go

directly again to a reporter at the *Capital Gazette* and to this entire ten year vendetta that we have.

So, we, you know, I don't know the answer, your question about due diligence we have to take issue with that. We think these things are in your possession and/or they are in your institutional knowledge. If you really can't locate a document, some of these things are out there in both the knowledge and the possession of law enforcement and the institutional knowledge, at least of the State's Attorney's Office.

And our feeling is that these go directly to things that we are entitled to under 4-263 as statements of the Defendant. And quite frankly as exculpatory because they go very directly to the not criminally responsible defense. Because in our opinion, and this is just what we are surmising, the only reason to have not acted upon all of these complaints.

And the State has provided to us in discovery -- Your Honor should be aware -- interviews, recorded interviews immediately following the shooting with Brennan McCarthy, with his wife Wendy Hartman. And these get into the subjects, Your Honor, of items three and four. With Tom Marquardt all of these other members of the, of folks involved in, with *Capital Gazette*, and with the defamation suit where they have said they all went to police and

complained and said they were terrified, and that they were concerned that there would in fact be a violent attack by Mr. Ramos. That they thought that he was mentally ill. That they thought, Mr. McCarthy said that he belonged in a mental institution, he was crazy.

MS. LEITESS: Objection. We are trying to address whether or not the State has provided statements of the Defendant. We are going off on a tangent here Your Honor. Exactly what the Court has asked us not to do.

MS. O'DONNELL: What I'm trying to do is articulate the core significant relevance of this line of discovery that we are requesting which are statements verbatim out of our client's mouth over this ten-year period to the very folks who end up, the *Capital Gazette* being victimized on June 28th. And if they have these things, we are not certain Your Honor that they have exercised the due diligence as an example that this has finally emerged, the Annapolis City Police Report after all of this.

Your Honor, I would --

THE COURT: I hear you as to Defendant's Motion to Compel Statements of the Defendant One and Two, I've heard those arguments. Now, you indicated that you wanted to combine Three and Four.

MS. O'DONNELL: Very briefly, Your Honor, on Three and Four. And I will just --

THE COURT: And, before we do that, Defendant's Exhibit H and I, any objection from the State?

MS. LEITESS: No, Your Honor, thank you.

THE COURT: They are admitted.

(Defense Exhibits H & I were then admitted into evidence.)

MS. O'DONNELL: Your Honor, very briefly on items Three and Four. Which is again the Anne Arundel County Police Department investigation related to threats and bizarre allegations and statements Mr. Ramos made against Brennen McCarthy, his wife Wendy Hartman, Judge Michael Miller, Kathleen Kirchner, Judge Maureen Lamasney and others.

And item number Four is the Anne Arundel County Office of the State's Attorney investigation regarding those very same threats. All of these are referenced in 2013 and 2014. So, we now have additional complaints over the years going onto 2013, 2014. And I'll just briefly, Your Honor in discovery materials all of this has been provided to us by the State that these threats, that Mr. Ramos made these threats to these people and that these people were concerned and went to the police and went to the State's Attorney's Office.

When this incident happened on June 28th, discovery materials indicate that Wes Adams the then State's Attorney

requested Mr. McCarthy to immediately go to the police and to provide a recorded statement because of the information that he would have regarding these past threats.

Your Honor, if you reference the State's letter for February 28th that you already have in your possession, it is attached to their Motion to Compel. Their response to our request for information concerning these threats and bizarre statements is contained on page one, the bottom, last paragraph. And I'm reading from their response.

MS. LEITESS: I object to the reading of the letter again.

THE COURT: You don't need to read it. I can read it.

MS. O'DONNELL: Well, Your Honor, their response is, "They acknowledge that this happened". They acknowledge that Kathleen Kirchner came to the State's Attorney's Office concerned for her safety, because --

MS. LEITESS: Objection. There is no indication that she came to the State's Attorney's Office, Your Honor. Misreading the letter.

MS. O'DONNELL: Well, I tried to read it and --

MS. LEITESS: And mischaracterizing the letter.

MS. O'DONNELL: -- she --

MS. LEITESS: Mischaracterization is what's going on here, Your Honor, and I'd object.

MS. O'DONNELL: I can read it verbatim, Your Honor.

MS. LEITESS: I'd object.

THE COURT: I can just read it.

MS. O'DONNELL: I can read it.

MS. LEITESS: I object.

THE COURT: You want me to read it, I'll read it right now. Paragraph, the bottom paragraph of the first page of the February 28, 2019 letter.

MS. O'DONNELL: Yes, Your Honor. I mean, it's difficult to argue without referencing what I'm arguing as a subject matter.

THE COURT: Well, you can certainly reference it.

MS. O'DONNELL: Yes, so without reading it verbatim, but not wanting to misstate it. What we understand is that there is an admission from the State here that sometime in 2013 or '14 Kathleen Kirchner, Esquire alerted the State's Attorney's Office that she was concerned for her safety due to Mr. Ramos' Twitter statements and behavior directed to her brother Brennan McCarthy during litigation.

And we are understanding from the State's response, that there is again institutional knowledge that the State recalls acting upon that and taking security steps because of potential danger from Mr. Ramos. So, and then in

addition, I say to you the same, what I referenced earlier, which is that we have in discovery materials, interviews, lengthy recorded interviews from Mr. McCarthy, from Ms. Hartman, from Mr. Marquardt, from Eric Hartley, from others all supporting this.

So, we are trying to find out information, once again, from the State what did you do about this? What investigation was opened as a result of this?

MS. LEITESS: Again, nothing to do, Your Honor. I object to the allegation to provide statements of the Defendant. They are literally going far afield and not arguing producing statements of the Defendant. That's what we are here on.

THE COURT: It is. What is, it is listed under Statements of the Defendant.

MS. LEITESS: Yeah, so --

THE COURT: -- A3 and 4.

MS. LEITESS: -- so, yeah, so that's not what she is arguing. She wants to know what the State did or didn't do.

MS. O'DONNELL: It is --

MS. LEITESS: We are obligated to give statements of the Defendant. She is arguing a completely different area.

THE COURT: So, that's going to be your answer.

MS. O'DONNELL: I said statements of the Defendant. I have also said at the bench and here, it is also exculpatory because it goes to the core of a mental illness defense. And again, quite frankly Your Honor, one of the things that we are seeking here is that if law enforcement made a decision and or State's Attorney's Office made a decision that the reason that they did not act on any of these whole series of threats of very severe violence, “blood bath,” “journalist hell,” “murderous rampage,” is because they believed that Mr. Ramos was a mentally ill ranting individual but essentially harmless. That is tremendously exculpatory to the Defense’s whole presentation that mental illness is at the core of this case.

THE COURT: Ah, so the conclusion of the law enforcement as in regards to the mental status of your client you believe is relevant to the, five years ago is relevant to the NCR Plea now?

MS. O'DONNELL: Absolutely, Your Honor.

THE COURT: Okay.

MS. O'DONNELL: This is a series of deteriorating behavior that can be, I’ve never seen such documented deterioration and clear mental illness dating back from at least 2010, perhaps even earlier.

THE COURT: Um-hmm.

MS. O'DONNELL: But yes, absolutely. And it’s

absolutely --

THE COURT: From people that had no direct contact with Mr. Ramos? For example, you've indicated that Detective Praley had no, his Report says he didn't have any contact with your client. But conclusions he may have made you think -- I understand what you are arguing.

MS. O'DONNELL: Well actually, he says in his Report, Your Honor, I didn't think he was a danger.

THE COURT: Right.

MS. O'DONNELL: This can only be described as ranting.

THE COURT: Right.

MS. O'DONNELL: So --

THE COURT: Because, but he also says he never had any contact with your client.

MS. O'DONNELL: Right, he does, he does say that. But again, we don't know what other efforts were made during this investigation from May of 2013 all the way to January of 2016 when the file is archived.

THE COURT: All right. So now, here's my question for you.

MS. O'DONNELL: Yes.

THE COURT: I understand what you are asking for. I believe I understand what the State has done, although I'm certainly going to have, let Ms. Leitess respond on the

State's behalf. You are asking for statements of your client relating to incidents that occurred in 2012 and 2013. And --

MS. O'DONNELL: Yes, Your Honor.

THE COURT: -- you've indicated that they are statements made to your client and also may be of relevance in light of the recent Not Criminally Responsible Plea that you fly on behalf of your client.

MS. O'DONNELL: Yes, Your Honor.

THE COURT: So, my question to you is even if I conclude that you were entitled to that. And if I conclude that the State no longer, for whatever reason, doesn't have the things that you are asking for in their possession what entitles you to propound a list of questions that I, and what authority do I have to order the State to provide responses to the nine questions that you have listed? What is the authority?

MS. O'DONNELL: The authority is 4-263, Your Honor. Which is the State to provide material and/or information. So, if we accept from the State that there is --

THE COURT: So, the rule, the discovery rule itself. All right. So, give me one case, give me something that says a judge ordered or and the appellate courts directed the State to respond to question propounded by the

defense in regards to these types of issues.

MS. O'DONNELL: Well, Your Honor, the questions propounded is just to specify what information that we are looking for.

THE COURT: I understand.

MS. O'DONNELL: Right. So, so, 4-263 specifically puts the responsibility on the State to provide materials and information. And that falls under when we are talking about the statements of the Defendant. And I believe I started off by saying -- let's see if I find it here, Your Honor.

(Brief pause.)

MS. O'DONNELL: "All written and all oral statements of the Defendant that relate to the offense charged." "That relate to the offense charged, and all material and information including documents and recordings that relate to the acquisition of such statements."

If you go down to Section Five, the exculpatory information, "All material or information in any form whether or not admissible that tends to exculpate the defendant or negate or mitigate the defendant's guilt or punishment as to the offense charged."

So certainly, as it goes to a mental health defense, it goes directly to exculpatory evidence with regard to the Defendant's guilt. So, under both of those

sections, Your Honor is entitled to require that the State provide information if they have it. Those lists of questions are only an itemized easy, quite frankly a template for saying what information it is that we are requesting.

THE COURT: Okay. I understand.

MS. O'DONNELL: And Your Honor, let me just to conclude Section A before the State responds. I will say, on Section Five so the record is clear we were asking for evidence and statements reflecting mental incapacity made by Mr. Ramos to personnel at the Rocky Gorge Animal Hospital in May of 2018 only weeks before the shooting surrounding the euthanization of his cat.

The State has provided us with information concerning witness statements and police reports with regard to the individuals who dealt with Mr. Ramos at the Rocky Gorge Animal Hospital and we are satisfied that that has been done. So, we withdraw that at this time.

THE COURT: Okay, as to that request. And just for my edification as to the -- well, I'll, never mind I'll get to that momentarily.

Ms. Leitess?

MS. LEITESS: I don't even know where to start, Your Honor.

THE COURT: All right.

MS. LEITESS: Please direct me to where you'd like me to start so I don't ramble.

THE COURT: I would you like you to start with the, the Defense has argued that they are entitled to statements of the Defendant as it relates to incidents that occurred in 2013 and incidents that occurred in 2012. So, I would like to hear you regarding --

MS. LEITESS: Sure.

THE COURT: -- each of those incidents.

MS. LEITESS: Sure.

THE COURT: Whether or not you believe the Defense is entitled to that information.

MS. LEITESS: In what form? In a Twitter form, Your Honor? Are you asking?

THE COURT: In what they are asking for. So, they are asking for all the information that the State has been provided.

MS. LEITESS: Okay. So, you --

THE COURT: Police reports and exhibits attached thereto.

MS. LEITESS: Yes. So, for the last hour and forty minutes or so counsel has been arguing that there is an additional burden on the State after it provides everything that it has from the Police Department, the four-page Report from Detective Praley that we are then somehow

responsible for whether the police had additional information or not.

And the way that we handled that is we asked Detective DiPietro to interview Detective Praley, to look for the box, to see if there were additional reports, and he found none.

So, we also suggested that they file a subpoena duces tecum because we do not believe that a 2013 Police Report which Your Honor to grasp what we are talking about, what we've been talking about for all this time, Mr. Ramos made public Tweets, he made comments during a law suit. To put this in context, Mr. Ramos had sued the *Capital Gazette*, Eric Hartley, Tom Marquardt, and another form of the corporate entity of the Capital Gazette going back to 2012.

During that lawsuit he encountered lawyers and Eric Hartley, Tom Marquardt, all these other folks and he would randomly or regularly rather make comments about the proceedings, about the lawyers, about the parties. And that behavior was not a direct threat, but it was disturbing to the *Capital Gazette* folks and they arranged a conference call. That was the four-page Report of Detective Praley, that is what we have given.

We have gone over and above and asked the police to further investigate and they, we've given what we have.

But that's not satisfying to the Defense. They

say because Detective Praley gathered some of those public Tweets and put them in a folder, that somehow that those items can never be recovered ever again. That's simply not true. They have subpoena power. They have just started exercising it in the last month. And I say this, this case is more than a year old. The first subpoenas that I have seen come out of the Defense are a month ago.

They can subpoena Twitter. The State does not control Twitter. They can also get all of the cases that Mr. Ramos was engaged in. He was engaged in four lawsuits, Your Honor. Many of those have Twitter records. The State has given what we have given.

They were, in one of the ones we just gave a few days ago from the Circuit Court from Prince George's County in a lawsuit involving Brennan McCarthy and Lori Sondervan and Bob Douglas, Bob Douglas is the attorney for the *Capital Gazette*. Mr. McCarthy
+ actually attached a big portion of Twitter records which he is referencing. And he makes the comment thinking that there is a comment about raping somebody's daughter and that there are these threatening comments. But they are talking about the actual litigation that's going on.

So, what I'm saying to the Court is we've given what we've had. We've asked the police to look and see if there is additional. The next step is for the Defense to ac

ally interview Detective Praley, interview Detective DiPietro, interview Mr. Marquardt, interview Mr. Hartley, interview any of the people of the *Capital Gazette* who made that phone call. If they think that there's information, we've given them what we have, Your Honor. We have given them the Tweets that we have and we've directed them that the Tweets are widely available on the internet. There's a YouTube channel you can go, you can see every single Tweet that Mr. Ramos did. There's an internet website called Scribed, they are all preserved.

But the most basic function, what's happening here Your Honor is the Defense is trying to shift the burden of investigation and call it discovery and call it statements of the Defendant. When they have the absolute ability to get those statements themselves with the help of a subpoena. A subpoena duces tecum which they can file with Twitter and get the entire certified business record ready to introduce into court document. But they don't do that. They want to shift the burden onto us and they want to make this case about something other than what it is.

So, when I answer State's -- or the Defenses One A and B of we've given them what we had. We gave them reports that we had, we gave them the information that we had. And just to clarify, this allegation about us not giving Twitter

records. TO my knowledge the first time that there was actually a request, give us all your Twitter records or give s whatever you have, do you have more was in June. And the June disclosure about Allison Borg was because it was mentioned in an FBI Report that we gave them. So, we disclosed to them that there was a complaint that Allison Borg had made not to Anne Arundel County Police, because remember we are working the Anne Arundel County Police in getting whatever they have on Mr. Ramos, it's actually the Annapolis Police Department. So, when they say hey this Report is mentioned in the FBI stuff you disclosed to us, we go and get it for them.

So Ms. Borg if you know how Twitter works, Your Honor, there's never any allegation -- I know I had to explain it to Mr. Tuomey too and it's funny because I actually know how Twitter works -- if you mention somebody, you just put their little name in an @ and the person's name so that when they log on to Twitter they see that you've mentioned them. So, if Ms. Borg is concerned that Mr. Hartley is mentioning her name, she reports that. Not that he's threatened to hurt her, or threatened anybody that he has actually mentioned her name in a Tweet. And that's what that Report is about. And we gave that to the Defense in June.

So, we've done our due diligence. But we didn't

know that there were additional reports to get because we already, we already gave the FBI reference to it that Ms. Borg had complained about it.

So, what this boils down to, is that entire 2013 Police Report comes down to this.

THE COURT: Let me make sure I understand what you just said. So, the, you turned over the FBI reference and then the most recent information -- I handed it to Madam Clerk, can I have that back?

MS. LEITESS: So, the 2012 report by Allison Borg to the Annapolis Police Department.

THE COURT: Yes, the 2012 report. So, you gave the FBI Report.

MS. LEITESS: No. The FBI mentioned it in one of their Reports.

THE COURT: Right. And then on, in June, on June 20th of 2019, you gave the Annapolis City Police Department Report and that's on the 2012 events.

MS. LEITESS: Yes.

THE COURT: All right.

MS. LEITESS: Right. So, but what counsel is trying to do is they are trying to say that we somehow have a due diligence to research every time Mr. Ramos spoke ever about the *Capital Gazette* or anybody in it. We could never do that because he has all these, also he has all these

lawsuits and he mentions the *Capital Gazette*.

So are we burdened with any time --

THE COURT: So, assuming that you don't have that obligation.

MS. LEITESS: Right.

THE COURT: To go back now and investigate what occurred in 2012 and 2013.

MS. LEITESS: Right.

THE COURT: What about the information that was provided in 2012 and in 2013? So, you have indicated now you've provided the Report from --

MS. LEITESS: The police.

THE COURT: -- the Annapolis City Police Department regarding the 2012 events. And some, I suppose these are Tweets attached to --

MS. LEITESS: That was in the Police File, Your Honor, yes.

THE COURT: -- that was in, attached to the Police File. So that's the Report as it relates to 2012.

MS. LEITESS: Yes.

THE COURT: As to the 2013, I, if I understand correctly, the Defense is saying well there ought to be something similar, some kind of similar report with the Anne Arundel County Police Department that also contains the Tweets and investigative materials that occurred at that

time. And you've indicated that you've located the Report from Detective Praley, you've turned that over. But Detective Praley's Report references some additional documents that he had including the --

MS. LEITESS: Notes and copies of Tweets --

THE COURT: -- the notes and the --

MS. LEITESS: -- that were emailed to them.

THE COURT: Twitter Tweets.

MS. LEITESS: Right.

THE COURT: And you have indicated that you are unable to locate those, correct?

MS. LEITESS: Right. That the police --

THE COURT: Or that the police have indicated to you --

MS. LEITESS: Right.

THE COURT: -- that they've done a search.

MS. LEITESS: Right.

THE COURT: And they were unable to locate the attached documents.

MS. LEITESS: Yes.

THE COURT: To Detective Praley's Report.

MS. LEITESS: Or --

THE COURT: And any supplemental. And do I correctly understand that Detective Praley has now been interviewed and indicated that there is no supplemental

report? That he didn't do a supplemental report?

MS. LEITESS: It's not clear from DiPietro's Report and how he writes that.

THE COURT: Right.

MS. LEITESS: But it is my understanding that there was not.

THE COURT: So --

MS. LEITESS: That doesn't, but that --

THE COURT: -- my next question is.

MS. LEITESS: Yes.

THE COURT: Did Detective DiPietro write a report memorializing his conversation.

MS. LEITESS: Yes.

THE COURT: Or his interview, if you will, of Detective Praley?

MS. LEITESS: Yes.

THE COURT: And do I have that?

MS. LEITESS: Yes, you do.

THE COURT: What is that?

MS. LEITESS: It's one of the Defense's Exhibits where, when they were asking for information.

THE COURT: I remember the email. So..

MS. LEITESS: There's a Police Report.

MR. TUOMEY: Defense Exhibit E, Your Honor.

THE COURT: I'm sorry?

MS. LEITESS: It's the one with the two reports.
THE COURT: B?
MR. TUOMEY: E as in echo.
MS. LEITESS: E.
THE COURT: Okay.
MS. LEITESS: Right. But what I want to get to, Your Honor, is --
THE COURT: Hold on one second.
MS. LEITESS: Um-hmm.
THE COURT: Because I want to make sure that I understand. Okay. Okay, I see it now.
MS. LEITESS: Yes. So, part of the due diligence is, you know, the 2013 Report was written, four pages. The notes are, cannot be found if they were ever turned in. And that all, this all presupposes whether or not Detective Praley actually turned in his folder or if he did not. But the bottom line is, the Police Department turned their stuff over to Iron Mountain, they kept all their stuff at least until 2016 in house. And then everything is shipped off to Iron Mountain. So, when they go and look at Iron Mountain, they don't find the folder. They look. They look all around. They don't have a folder.
But guess what, Detective Praley is available to be interviewed by the Defense. They can have an investigator talk to him. And if they are trying to get

notes, I mean, let's talk about the actual substance of what they are trying to get. We want a copy of the Tweets that the *Capital Gazette* was concerned about. Okay, they can get that from their subpoena that they subpoenaed the *Capital Gazette* for the Tweets, Bob Douglas, any of those people.

And even more easily the State has provided the most recent packet of civil filings in the Prince George's County case Ramos versus Hartley and the *Capital Gazette* and Tom Marquardt, which has a lot of these Tweets because Brennan McCarthy brings those Tweets to the attention of the judge and says Mr. Ramos is saying this stuff on Twitter, judge. Will you do something about it, will you order a mental health exam? Will you tell him to stop Tweeting? Whatever.

And so, the Defense has this. And this is what is strange about this. The Defense has this. It's on the open internet. It is in civil filings. It is a subpoena away, these Twitter records. They can get them. But they haven't. And so, they want to shift the burden that you have to give Twitter. And Tweeting five years before doesn't prove, doesn't exonerate, doesn't exculpate the Defendant from these crimes on June 28, 2018.

They may be interesting, but they don't prove or disprove anything. And they certainly don't exculpate or exonerate, especially Your Honor when you look at them in

light of what's going on. He is in litigation. Mr. Ramos is in litigation with these people at the *Capital Gazette* for years. And tangentially to people who are related to the criminal charge. When he is unsuccessful, and by the way there's even errors in Detective Praley's Report where he says that the, a defamation case is unsuccessful, that case was still going on when that Report was written.

So, the fact that the Detective wrote that Report, that's been discoverable, we've given it. The State has told the Defense we have no file, and by the way even if we did have a file, the only thing that we are obligated to give are things that would exculpate the Defendant or statements of the Defendant.

And Defense's argument under 1A through D or E or whatever it is, is all about has the State give statements of the Defendant that relate to the charges he is charged with. How does Mr. Ramos' statements on Twitter five years ago create a discovery obligation for the State? They don't. Nevertheless, we've provided those items.

Does the Court have any other inquiry on those two for One and Two?

THE COURT: I do not.

MS. LEITESS: So, the next part, Your Honor, for the Defense's Three and Four about various people who said that they were alarmed by Mr. Ramos. Mr. McCarthy has

written about this in his filings in the civil case. That's been provided. Mr. McCarthy has been subpoenaed duces tecum for his records on the case. They can interview Mr. McCarthy. The State has provided a taped statement, or a videotaped statement of Mr. McCarthy about his interactions with Mr. Ramos.

Ms. Kirchner's concern that during the litigation, again, now we are into 2013 and '14. Mr. Brennan McCarthy was involved in litigation with Mr. Ramos and Mr. Ramos Tweeted about it. The fact that Ms. Kirchner is concerned that during this litigation that Mr. Ramos may be an issue that is disclosed to the Defense. There is no investigative report by the State, we have nothing in, there was no investigation, there's no reports. We've given them the information that we have.

We've given them the interview of Wendy Hartman the wife of Mr. McCarthy. There is confusion apparently in this request about Judge Mike Miller. There's no Judge Mike Miller. Okay? There's also confusion in this allegation that goes back to Brennan McCarthy thinking that the Defendant Mr. Ramos is referencing Evil Tom as Judge Tom Miller. That's a mistake.

So, then the Defense has compounded that error and said give us the information that you have that there were threats against Judge Miller. There are no threats against

Judge Miller, Your Honor from any of the documents that we have or any of the Tweets. So that is a misleading characterization. There are no allegations of direct threats by any of these folks. There's no direct threats against Judge Lamasney.

But the Defense would have you believe that all these people were being threatened and that somehow the State has to provide all these threats. They've provided no information that that is the case other than that Mr. McCarthy has alerted the Prince George's County Judge that Mr. Ramos was Tweeting and mentioning people by name during this litigation.

So, they're putting, again, a burden on us to provide statements of the Defendant. And again, the statements of the Defendant are limited to his public comment on Twitter. Nothing else. And we've given all the taped statements that we have. They have the ability to interview people. They have the ability to file subpoenas duces tecum and talk to people about that.

One of the, just as an aside, Your Honor, how far afield we can go down this rabbit hole, is this "open season" comment that they are saying is so alarming. If you read Mr. Ramos' is referencing the fact that somebody that the *Capital Gazette* said that, "It's open season when people commit crimes or there are politicians to write about them".

He is referencing words that the *Capital Gazette* has written about investigatory writing. So, he references "open season," talking about it's open season on people because he's filed a defamation lawsuit.

So, they take that word "open season" that Mr. Ramos is referencing and they use it as if it's evidence of a crime or behavior. I'm just telling you that to say you are hearing all these things, but this is in the context of four lawsuits between 2012 and 2014 that are going on between many of the parties. And criminal case between Mr. Ramos and Ms. Sondervan. So, this is all the comments that Mr. Ramos is making.

We've given them what we have. And we suggest that under 4-263 the State is not obligated to provide his Twitter comments because they are not in our, they are not, they are not solely in the State's possession. They are easily available in many other ways. And, the State has so far provided what we have.

And I do want to address the last, the evidence of statements reflecting mental incapacity, Rocky Gorge Animal Hospital.

THE COURT: The Defense said they had those.

MS. LEITESS: Yes. We've given the statements of the veterinarian that Mr. Ramos was a concerned person. He took his cat in as his cat was dying. Not that there is any

evidence of incapacity that was reflected in any of that evidence.

One moment please, Your Honor?

THE COURT: Certainly.

(Brief pause.)

MS. LEITESS: Okay. So, Your Honor, also the State when Ms. Kirchner, as we disclosed to the Defense, alerted the State that her brother was involved in litigation in Prince George's County and she was fearful because Mr. Ramos' Tweets and his behavior in the courtroom. But we provided information to the Defense that we alerted the State's Attorney's Office alerted security in the courthouse and to make sure that Mr. Ramos didn't come in in any kind of a threatening manner. The courthouse in Anne Arundel County.

Meanwhile, remember, this is a Prince George's County case that's going on for two years and Ms. Kirchner was concerned if Mr. Ramos would be lashing out at her, her brother, any of those things. And the State did take actions to alert the security in the Sheriff's Department as we indicated to the Defense.

But there is no obligation that the State is supposed to share any other of its mental impressions or to answer any questions. The State is not a party, Your Honor. The State does not want the Defense to try and make it a

party in some way. And that's what they are trying to do. The State is the entity that is providing all of this information that relates to the murder of five people, the attempted murder of one person, and the first-degree assault of six remaining people June 28, 2018.

What the Defense is trying to do is extend the discovery obligation and call things statements much more broadly than the law has interpreted or the Maryland Rules of Discovery require especially in light of the fact that these Twitter records are readily available online they are readily available by subpoena. Thank you.

THE COURT: One more question for you Ms. Leitess. Any case law you would like to refer me to? Other than the Maryland Rule, which I am very familiar with.

MS. LEITESS: Well, we did file some various, so, I think relating back --

THE COURT: Anything in addition to what you filed?

MS. LEITESS: Let's see what we say in our brief, Your Honor.

THE COURT: Or any law you'd like to highlight other than the Discovery Rule?

MS. LEITESS: Other than, I think this is a factual case, Your Honor. The facts of whether or not what Mr. Ramos said during a lawsuit about people at the Capital.

Again, he is suing two of them. He's suing the entire company. And his remarks about them and their lawyers during litigation while certainly something that the Defense wants to see, does not impart an obligation upon the State that it relates to the murder of completely unrelated people five years later. It's not an obligation that the State must provide this.

We've given them what we've had. And we've given them the ability to fully investigate and talk to those folks back in 2013. And they've taken our suggestion finally by actually serving subpoenas to get some of this information. And we've also, again as a courtesy have given them every single piece of litigation in the Ramos versus whoever saga, it's actually about six cases if you count all the criminal, it may be eight cases, rather. Peace Orders, there are three Peace Orders. There are a Violation of Probation. There is criminal charges, there's allegations of perjury charges. We've given them all that.

So, we've given them, we've gone above and beyond giving them the tools that they need to get to the information that want which is statements of the Defendant. And again, the statements of the Defendant are not interviews of the Defendant. They are not statements he made to a police officer, they are not comments that he made to a person, there is no allegation that he ever threatened,

approached, harassed, or stalked anybody. What he did is he mentioned them on Twitter and he said strange unusual things during litigation. I think that we have fully provided what we need.

One other thing, Your Honor.

(Brief pause.)

MS. LEITESS: You know, there is case law, Your Honor, for statements of the Defendant, what is involved and oral statements not involving state agents. There is that Funderburk v State case it's back in the Rules Commentary under C, Statements of the Defendant. That the State is not obliged to furnish the Defendant with the substance of statements given to non-state agents since the statements don't come within the Rule.

Now, I know that the Rule has been expanded to include any and all statements. But I think it's also, I mean, the due diligence that the State is obligated is to give you what has been given to State, give the Defense what has been given to state agents, which we have done to the best of our ability. But not to go above and beyond that as an obligation to require us to actually get the Twitter records on behalf of the Defense when they can actually investigate this.

THE COURT: Okay. What about the, do you want to respond to the nine questions that the Defense would have me

ask you?

MS. LEITESS: Yeah. Where's the rule that says we are supposed -- this is not an interrogatory, this is not a civil case. These are interrogatories. Most of those they can go and interview the detectives. And whether or not people were interviewed -- strike that. They are trying to get inside the State's Attorney's Office to ask what people knew or what they didn't know. Or what Detective Praley did or didn't know. What you do with that is you interview Detective Praley. You interview Detective DiPietro. You don't get to go behind and say hey five years ago or six years ago who knew what about the Defendant's behavior.

We've given them the information that we had and the contact that we had from Ms. Kirchner that she had contacted the State's Attorney's Office concerned about Mr. Ramos in his Prince George's County litigation with her brother at the same time that her brother was actually filing with the Court a Motion to have a mental health examination. Again, the State has no control or jurisdiction over Mr. Ramos who lives in Prince George's County in a Prince George's County case.

So, they are literally trying to make the State a witness and it is improper. We have given them everything we have and they have no authority. They are the ones who really, they are the ones who are proposing that Your Honor

order this. They should be the ones that have the authority and they have not promulgated that to the State, to the Court.

THE COURT: All right.

MS. O'DONNELL: Your Honor, just very, very briefly in response to some of the comments that the State has made. The State suggests that we subpoena records and that we file motions for tangible evidence from records from other parties, we've done that. We subpoenaed the records directly in April from the Anne Arundel County Police Department and it produced absolutely nothing for us.

As Your Honor is aware, we have recently filed Motions for Tangible Evidence, for records including Twitter feed from the *Capital Gazette*, Robert Douglas. From Rick Hutzell of the *Capital Gazette*, from Brennan McCarthy and from Kathleen Kirchner. And we will ask that Your Honor sign those today to find out if those parties object to producing those so that we can follow the State's invitation for other avenues to obtain this information.

The State suggests interviewing police officers. I've been with the Public Defender's Office now for over 32 years. I have never been in a murder case where the lead detective was willing to sit down and have me interview him. But if the State is offering to facilitate that interview with Detective DiPietro we would be more than happy to take

them up on that. We do not think that that is a realistic suggestion as for how to obtain information in this case.

Your Honor very astutely I think went directly to, and I think it was Defense Exhibit, was it E or F that is the DiPietro Report on his interview with Officer Praley. And we are seeking information. And what you'll see is that Detective DiPietro provided very, very little information. And I'm referencing page six of seven, with regard to that Exhibit and I -- is it E, Your Honor?

THE COURT: It is E.

MS. O'DONNELL: It is E. So, you'll see, he has two paragraphs there on his interview that are very quick. Which basically just says he talked to Praley. Praley remembered he created case file. He didn't contact Ramos. And they didn't pursue, the Capital didn't pursue a criminal complaint.

But he does not ask him about any other steps with regard to his investigation. Whether there was a supplemental file. Whether he went to the State's Attorney's Office. Whether actions in the Sondervan case were monitored. When the investigation was concluded. All we have is this conclusory comment on paragraph two, "Upon concluding his investigation". So, we had absolutely no information with regard to what the next steps of that investigation took, except that the Report itself, while it

is dated May of 2013, references Twitter feed provided to the police from May 2013 to September 2013 and this reference that none of this, these files were not archived until January 2016.

So, there is information out here. And I continue to say if they can't find the file, you know, we accept the representation if that's, if they've exercised due diligence. But that doesn't mean that they are not in possession of information concerning the subsequent steps of this investigation that we have no way of obtaining except for through the police and through the State.

And again, if the State's offering to facilitate that interview, we would gladly take them up on it.

The, really, I guess one of the last points that I want to make is that the State seems to keep coming back again and again to making comments like how does this relate to anything he's charged with anyway? How is this important? How does this tie in? This happened five years ago. This happened longer than that. This has nothing to do with what happened on June 28th. Your Honor, the State's own case and their own presentation, their own evidence will present that prior to the shooting, on the day of the shooting their position is that Mr. Ramos sent three letters out. Just prior to the shooting. One to Eric Hartley who wrote the very column that all of this is about, "*Jarrod*

wants to be your friend," back in 2011.

One to Judge Charles Moylan the Appellate Judge who denied his defamation suit. And a third to Bob Douglas, again the attorney for the *Capital Gazette*. Right prior to the shooting on June 28th. And what he filed with Bob Douglas, Your Honor, is a one-page Motion for Reconsideration in the defamation suit against the *Capital Gazette*, which is the subject of all of this that we are talking about.

And it says, Your Honor, quote, it's one paragraph, "If this is how the Maryland Judiciary operates the law now means nothing. Petition at 13. See also Re-statement Second Tort § 223. In earlier times the principle method of self-help was the clan or blood feud. One of the primary reasons for developing the tort law defamation was to induce the defamed person to resort to the courts for relief instead of wreaking his own vengeance. That is how your judiciary operates."

"You were too cowardly to confront those lies and this is your receipt. I told you so. Jarrod Ramos." And, Your Honor, the Certificate of Service actually says, "I do certify that on this 28th day of June 2018 I served a copy of this paper upon each and every party by mailing it to Robert Douglas at the address in Baltimore. I further certify I then did proceed to the office of Respondent Capital Gazette

Communications at 888 Bestgate Road, Suite 104 in Annapolis, Maryland 21401 with the objective of killing every person present."

So, the State's own evidence suggests that while Mr. Ramos was in the *Capital Gazette* lobby he Tweeted, he went onto that same Twitter account and Tweeted a comment, "F you, leave me alone." The same Tweet he did in September 18th of 2015 when his Appeal was denied. The same language as in the defamation Complaint. The State has conducted forensics, DNA, fingerprints, handwriting on those letters sent to Hartley, Douglas, and Moylan. So, to suggest that somehow none of this has anything to do with the events of June 28th is quite frankly absurd.

It is the very basis and motivation this entire story relates at the very core of what happened on June 28th. And I would also add that the State has provided all of these materials. The 2013 Police Report, the interviews with McCarthy, Hartman, Marquardt, Hartley. Emails with Mr. Ramos and Ms. Sondervan. All the Twitter messages and all the Court cases that they reference they have provided them directly to Doctor Patel from the Clifton T. Perkins Hospital who is conducting an examination with regard to not criminally responsible. They have provided them.

So, for them to suggest that none of this is relevant to the case is quite frankly absurd.

Your Honor, and the last comment that I would make here with regard to any of our requests is that, you know, the State says there were no threats made to Judge Miller. Fine. The discovery materials indicated there was a quote that threats were made to Judge Miller. That's why we asked about them. The State says, the Defense says "open season" is this provocative statement. We're not saying that. It's the *Capital Gazette* in the 2013 Report who said that to the police, Your Honor. These are things that come directly out of materials we've been given. We are not putting our own interpretation or spin on them.

And as far as 4-263 goes, quoting law that doesn't exist anymore I don't think should have obviously influence with the Court at all. We are entitled to all written and all oral statements of the Defendant that relate to the offense charged. It has nothing to do with whether those statements were made specifically to law enforcement. Although in this case, much of what we are asking for, the records indicate was given to law enforcement.

Your Honor, the last comment I would just make very briefly is, and it was just, you know, a gratuitous comment on the part of the State. The reason we requested the information concerning the Rocky Gorge Animal Hospital was because we had information regarding witnesses there who made statements about Mr. Ramos' mental health. And for the

State to say that, they said there was no mental incapacity issues is again, not accurate. They have provided us themselves with an interview from someone there who said that his behavior was supremely bizarre.

THE COURT: I don't know why either side keeps talking about something that --

MS. O'DONNELL: Well, I just mentioned it because --

THE COURT: -- you've indicated you were --

MS. O'DONNELL: -- I don't like inaccurate statements being made, Your Honor.

THE COURT: Okay. I don't know why either side has continued to talk about something that both sides agree has been provided at this point. So, it has no bearing.

All right. Thank you. Give me one moment.

(Brief pause.)

COURT'S FINDINGS

BY THE COURT:

All right. As to the Defendant's Motion to Compel Discovery filed on May 17, 2019, related documents, exhibits, responses thereto, as it relates to Number Five A: Statements of the Defendant. The Defendant, pursuant to the Maryland Rule 4-263 which has been referenced repeatedly asks that the State supply, and the State is required to supply without the necessity of a request, "All written and

oral statements of the Defendant and any co-defendant that relate to the offense charged and all material and information including documents and recordings that relate to the acquisition of such statements."

Additionally, the State is required to supply D5, which is, "All material or information in any form whether or not admissible that tends to exculpate the Defendant or negate or mitigate the Defendant's guilt or punishment as to the offense charged."

So, those are the two areas of the Discovery Rule that the Defense is seeking to pursue at this point in time. The State notes that they have supplied discovery and that they continue to update the discovery as is also required by Maryland law. Both sides have a continuing duty to disclose that which they are required to disclose.

So, the question then becomes as to the information the Defense has requested, number one are they entitled to that information pursuant to the Discovery Rule. And really if they are not entitled to that information even though the State has sought to pursue at least some of the information the argument ends right there. Because that simply means the State has provided more than it is required to do pursuant to the law.

So, I look at this as an ongoing issue in this particular case. Because initially, this case only related

to guilt or innocence. It became expanded in terms of what is required regarding discovery when the Defense filed the Plea of Not Criminally Responsible. Which then put psychiatric issues into the mix in terms of discovery. So, it, if you will, expanded that which the State is required to supply pursuant to what is referred to as exculpatory information in Maryland Rule 4-263.

I realize that even prior to the filing, much of this information had been provided by the State. And the Defense certainly had indicated on the record that they were considering and pursuing and investigating the idea of filing a not criminally responsible plea. So, it certainly could be argued and it would be a good argument to make that the, by the Defense, that the duty to disclose that information had arisen prior to the actual filing of the NCR Plea because the Defense had indicated that's what they were pursuing and rightfully so.

The, when I look at this information, that is supplied to the Court at this point in time, I do believe that the information regarding the animosity, if you will, directed at the Capital Gazette and those who worked there is certainly of relevance in this case. And is of relevance in phase one, which will be the guilt or innocence phase and is of relevance in the pursuit of the plea as it relates to not criminally responsible. And hence, I think that this,

that the State was correct in its decision to disclose that information. And the Defense is correct in its decision to pursue that information.

So, then we move on to the specifics of that. The, certainly the law is clear that the State is required to turn over that which is in the possession of the State or State agents. The State is not required to go out and do additional research, if you will. For example, I have noted previously Twitter is not a State agent. So, anything in the possession of Twitter is not, the State is not required to go obtain that information if they don't already have it. Likewise, information within the possession of the Capital Gazette, the Capital Gazette is not a State agent. And while it may have as an entity some information in the possession of, there may be information in the possession of the Capital Gazette, that is not the same as being in the possession of the State or a State Agent.

Now, certainly the State is required to turn over police reports that contain either statements of the Defendant, or as it relates to the Rule, or exculpatory information as it relates to the Rule. And, I have already commented on what that is in this context.

Now, what occurs when the State indicates that they have done a search regarding police reports and that there are some reports. Given the age of this information

and that some of it has been moved from one location to a storage facility that I think that we all recognize is a storage facility called Iron Mountain. That some of those reports they now cannot locate and they indicated that the, particularly as it relates to the 2013 reference to information that Detective DiPietro wrote a report dated, and they are due, but I have been provided two copies. I haven't gone line by line. But they appear to be the same to me as well.

He has written a seven-page Report detailing his efforts, or the efforts of the Anne Arundel County Police Department to locate those, the file specifically as it relates, I believe, to the Report. And the documents related to the Report from Detective Praley. And I believe, although it is concise that it is clear that the Anne Arundel County Police Department did in fact conduct an exhaustive search to at least based on the information I'm being given to locate the information that Detective Praley had back in 2013 when he prepared the Report.

And I am convinced based on this information that, and the list of, let's see 102 files that is referenced and the boxes that are referenced that certainly they inventoried and searched for the Report and the related documents and they really have no incentive not to locate that information. In fact, it would probably be better for

them and the State if they were able to locate that information.

Nonetheless, where do we go from this point. They are entitled, the Defense is entitled to the information. The State has provided all that is in its possession. It has a continuing duty to disclose. It is complying with the rule in terms of the continuing duty to disclose. But nonetheless there's certain information that the Defendant is seeking, the Defense is seeking that it appears at least at some point in time was in the possession of the State. So, that's where the question submitted in Exhibit F which is a letter prepared by the Defense supplied to the State's Attorney's Office asking particular questions.

And what I am going to hold in regards to this particular issue, is that the State has a continuing duty to supply material and information. And, I think the material that is in the State's possession is, I'm satisfied that that that has been supplied to the extent that the State is able to do so.

The question is, and I think this is the Defense, the crux of the Defense argument what about the information? Has all of the information as to the, that is in the possession of the State been provided to the Defense? And as it particularly relates, and I, the State doesn't have a duty by the way to go search out what is contained in the

civil cases filed in this jurisdiction or other jurisdictions, that's not a, that's an investigation. And it's entirely appropriate and certainly appropriate that they turn the information over to the Defense. But, that's really above and beyond what the Discovery Rule requires.

What the Discovery Rule does require is the statements of the Defendant and exculpatory information. Those materials and the information that are in the possession of the State.

So, what to be done about the information that may or may not be in the possession of the State in regard to the search for the documents that the Defense is seeking. And so, when I review the request made from the Defense, I am going to go one by one and I'm going to indicate what I believe the State as a result of not being able to find the information, what I am going to require them to do in terms of providing the information. And it need not be, the State may provide it in a format that the State believes is appropriate. In other words, I'm not going to dictate the format that the information is provided.

But, I do believe the Defense is entitled to know if follow-up steps that Detective, or Officer Praley enumerated in the Report, which is 13-719559 were taken to the best of the recollection of Detective Praley on the assumption that Detective Praley is still willing to have

communication of this, because Detective Praley, if I understand correctly is now retired from the AACPD. So, he is not longer a State agent. But, based on the fact that Detective DiPietro communicated with Detective Praley, and Detective Praley already spoke with the police, I am going to, and I believe that it's a safe assumption to make even though I hate to make them, assume that Detective Praley is willing to provide that information to the best of his recollection and ability.

Question number two: Was the information contained in the Report conveyed to the Office of State's, the State's Attorney as the Report indicates. And, I am going to, again, to the best of Detective, and I believe it's Detective Praley, it's referred to as Officer Praley, Officer Praley to the best of his recollection provide that information.

And I think it was, okay, as to question number three, again, as to Officer Praley, again as to that Report. Whether he has any recollection of continuing to monitor that particular Report.

And, as to question Four whether or not Officer Praley has any recollection -- and I believe this is answered already in the State's Response, whether or not Officer Praley prepared a supplemental report although the wording, I agree with the defense is slightly, it could be

slightly construed two different ways. So just for clarification purposes what is the Officer's recollection, or retired Officer's recollection.

As to question Number Five, I'm not going to require anything further as to question Number Five. I've indicated that the State is to turn over whatever reports are existent, or exist.

As to question number six, I believe I've addressed that. If there are any additional if there are any additional, is there a report or any attachments to a report, State is to turn them over and again, Officer Praley is to supply whatever recollection he has with as much specificity as he is able to. And I'm not really ordering Officer Praley to do anything. I'm ordering the, that the State to the extent that it just, or to, in the manner in which it decides to do so obtain that information.

As to question Seven, I believe Ms. Leitess answered question number seven already, that the State does not have in its possession any further Twitter messages from 2011, 2012, 2013 or 2014. Is that correct Ms. Leitess?

Yes. As again, the most recent civil filing that I provided a couple days ago.

THE COURT: Right.

MS. LEITESS: A week ago. That has a large amount of the courtesy copy (inaudible word).

THE COURT: Right. So, certainly I would note that both sides have a continuing duty to disclose that which is discoverable. So, something, if something were to come into the State's possession, say a witness comes in for an interview and has a stack of these Twitter messages, then I would require the State to turn those over. So, that duty to disclose continues.

And Ms. Leitess, am I correct to understand that the, the FBI information that the information provided from the Annapolis City Police Department are, all of the information that the State has and law enforcement has in regards to the August 2012 events.

MR. TUOMEY: The, I apologize, Your Honor. So that was referenced in what was put before the Court in Defense Exhibit H a cover letter with that information. So that information was provided on June 20th.

THE COURT: Okay. So, the State is representing that that is the information that they have in regards to that, those events. And question number nine relates to the reasoning for decisions made by the State or law enforcement. I don't believe that falls within the Discovery Rules, so I am not going to direct a response to that.

So that covers A, 5A in regards to the Defendant's Motion to Compel.

MOTION in re: EXPERT WITNESSES

THE COURT: If I recall correctly, and I believe I do B, both sides had indicated that they believed that that would be in compliance by, or the Defendant would be, Defense would no longer be pursuing that by this date, is that correct?

MR. DAVIS: Yes, ma'am. 5B refers to scientific testing analysis examination comparisons previously we had withdrawn 5B (1) and (2) as we had subsequently received that information subsequent to the filing of the Motion to Compel. We have also subsequently received the fingerprint information from the State. So, at this point in time the Motion to Compel as it relates to the DNA serology trace evidence, the handwriting and the fingerprints have been satisfied, Your Honor.

THE COURT: All right, 5C.

MR. DAVIS: 5C lays out and it refers to the State's expert witnesses and it lays out what we were seeking. It then also identifies the experts that we had been provided up to the time of the filing of the Motion at that point in time. So, and those people are identified. I will say that the State has made further identifications of other individuals.

So, subject to the Motion of please identify any and all experts they have provided additional information

and additional situations where a Ms. Diane Lawder, L-A-W-D-E-R will be, we understand the State has identified her as an expert for handwriting. There was a Ms. Patricia Rogers who has been identified as a fingerprint expert. And there has been a, an individual by the name of Tarah, T-A-R-A-H and I believe that is Heisel, H-E-I-S-E-L who has been identified as an expert in gunshot residue. Those are the additional experts that I believe that the State has identified. I don't think they've identified anybody further than that. And just for clarification, if we can make sure that's clear.

MR. TUOMEY: Your Honor, there are additional names that hasn't been provided, Doctor Gregory Sedoff, and Ms. Nancy Baker from Baltimore County Police Department. So, there are additional names. The State is providing names as we are getting them, and providing CV's as well as the basis for opinions and reports. There's nothing that the State hasn't provided. And Mr. Davis and I have exchanged emails and information back and forth as those experts are noted. So, given that, I think by Defendant's own acknowledgment the State's in compliance with the Rule and will continue to be in compliance with the Rule if we note further experts or there are further conclusions reached by those experts.

THE COURT: Is the Defense asking for anything

other than me to direct the State to continue to comply with the Discovery Rule as it regards, in regards to experts?

MR. DAVIS: No.

THE COURT: Okay. So, I'll just, direct that the State is to continue to comply with Maryland Rule 4-263 as it relates to experts as it relates to Defendant's Motion to Compel regarding C.

MR. TUOMEY: And, Your Honor, I apologize, you moved from B to C before I could address the Court. The State has also provided (inaudible word) for those enhanced discovery packets for underlying scientific data in Response to Mr. Davis' September 28th Request for handwriting analysis, for fingerprint DNA analysis, GSR forensic examinations, testifier examinations by Mr. Gesser, Officer Gesser from the Anne Arundel County Police Department. The State's in compliance with all of that as well. I just didn't want to gloss over that as (inaudible word) the State.

THE COURT: Okay. Thank you. All right, D.

MOTION IN RE: LAW ENFORCEMENT FILES

MR. DAVIS: Right. So, what we asked for in D is to have an opportunity to review the police files or any and all law enforcement agency which participate within, offered assistance of any kind during the investigation of the matter. Including the Anne Arundel County Police

Department, the Sheriff's Department, Annapolis City, Anne Arundel County Fire Department, the FBI and any and all other law enforcement agencies involved in any way in the investigation of this matter. I don't believe that we are aware of anybody other than the first five being involved at this point in time. In other words, I don't have any ATF or anything else of that nature.

But the reason we asking for it, I think has been displayed, quite frankly throughout the history of this case in the disclosure of information that has been given, and quite frankly the late disclosure in our opinion of information that the State has provided. The lateness going all the way up to June 20, 2019 and we just got this Report from the Annapolis City Police Department.

So, the State is indicating that they have given us everything. And when I say the State, I mean the State's Attorney's Office have provided us with everything that they have received. Well, it appears that perhaps they haven't received, well, at least from our perspective, they haven't received everything because we are just getting the reports from the Annapolis City Police Department that is dated 2012 and we are just getting it on June 20, 2019.

So, there has been in this particular case, and whether it is the fault of a prior prosecutorial team, or it's the fault of the Anne Arundel County Police Department

or the Annapolis City Police Department to us is irrelevant as to who is responsible for it. If we are entitled to it which we are under the Rules, it is something that we should be entitled to. So, our concern is to make sure --

THE COURT: Where in the Rules?

MR. DAVIS: Excuse me?

THE COURT: Where in the Rules do you think?

MR. DAVIS: Well, and I mean in the Discovery Rules we are certainly entitled to certain evidence that is, you know, pursuant to the rules, whatever the Rules obligate the State to provide us. I mean I could, it's all in 4-263. That's what I'm referring to is that information contained in Rule 4-263 which the State is obligated to provide.

So, and the reason that we are asking for that is due to the delayed disclosure of documents and actions of the police. I mean, at the time that we filed the Motion we had just recently received the State's Motion for Protective Order. But yet, it seems that that individual and that police report related to that individual who contacted the police, that happened in 2018. So, why we just recently got it prior to the Motion being filed, or excuse me the previous date of the Motion being June 25th.

They had attachments to the documents. The information was received by the State November of 2018. But if it was received by the State November of 2018 why are we

just getting it sometime, I believe it was in May or early June of 2018? The police conducted an interview of this informant on the first of October with, you know, some Special Agent Brown of the FBI. So, I, again, going back to the law enforcement files that we are looking for is anybody involved in the investigation.

And our concern is that there is this late disclosure. Again, is it late disclosure to the State's Attorney's Office? Or is it late disclosure to us from the State's Attorney's Office? The FBI's not obligated to give that information to us. The Annapolis City Police aren't obligated to give that information to us, the State's Attorney's Office is. So, wherein is the delay? Where does the delay exist in getting it to the Defense? In fact, we weren't given the information about the agent, or about the interview with this informant until the State filed its Motion for Protective Order. That's the first time we had heard about it. But yet, that interview was conducted in October of 2018. That clearly is not diligent as the Rule requires in the State providing that information.

So, our concern is that the police may be in possession of other material to which we are entitled. Either they are not affording it to the SAO or the, again, the SAO is not affording it to us. We can accept whatever representation the State's Attorney's Office wants to put on

the record as far as why is there delay and do they know if they have everything that the Defense is entitled to? You know, when you've practiced in this County for twenty years and the State's Attorney's Office has a habit of saying you have what I have. Okay, but that's not, that doesn't satisfy your obligation. Your obligation is to make sure you have everything that we are entitled to that the police have. Okay?

So, that's our concern is do we have everything that we are entitled to that the police have. And our concern rises legitimately, I would suggest to the Court, from the late disclosure of a lot of police documents. Including the one that we just recently received June 20, 2019. So, for those reasons we are asking that we be given the opportunity to review these particular law enforcement files to make sure that we have. And if the State wants to review it first, fine. You know, we just want to know that we are getting everything that we are entitled to pursuant to Discovery Rules. And we have some concerns that we haven't been given everything due to the late disclosure of everything coming in.

THE COURT: Thank you. State?

MS. LEITESS: So, it's a little bit misleading and not appropriate for counsel to say we're concerned about the late disclosure. We didn't know about this 2012 report

until recently. Well, guess what, we provided the Links Report on Allison Borg's report to the Annapolis Police Department on August 3, 2018. So, we provided information to the Defense that somebody reported a concern with Jarrod Ramos in 2012. We gave them that information.

It was then provided in June when they said, okay, we see this FBI Links Report, we want that report. So, we are like, okay, we'll get you the actual report. So, the information was provided that somebody complained about Jarrod Ramos in 2012. Again, it gets into the somebody, Ms. Borg, not liking a Tweet that Mr. Ramos added her at. Remember, I told the Court Twitter if you put somebody's @ symbol, they get notice of what you write on Twitter.

So, her, him saying something about somebody committing suicide or should kill themselves and he is saying, hey Allison Borg look at my Tweet. How does that relate six years later to an obligation for discovery for a 2018 murder of *Capital Gazette*? It doesn't. But we gave it anyway. And to call this late disclosure we are giving materials. It's not a discovery obligation, Your Honor.

And even if the Court thought it was a discovery obligation to let them know about other contacts that Mr. Ramos had, or other reports filed against him, we did it back in August. So, that is misleading for counsel to say to you that we are somehow withholding information.

Annapolis Police Department had a Report. We've been dealing with Anne Arundel County. We got him the Report.

The other thing is for the Protective Order, we don't want to get into too much of it. But, if a person tells us information that only becomes relevant when an NCR filing is made as Your Honor pointed out, what may or may not be relevant to pretrial discovery for a homicide trial suddenly becomes relevant when someone has filed an NCR. The disclosure of a confidential informant and what that person says becomes highly relevant in that light. And those things are disclosed.

If someone calls the police and wants to come and talk about what Mr. Ramos says or doesn't say in the prison or the jail, we can ignore that if we want. We only have to turn it over if it is statements that Mr. Ramos made and also if there's anything that exculpates and exonerates him. And, we've done that. We've turned it over. So, as far as reviewing the master file, if counsel wants to make an appointment to review the Police Department's file, then they should make an appointment with us. We are not going to call them, they can call us, we'll make those arrangements to do that with them and they can see any of the materials that they wish to see.

But, as far as the FBI, the State has no ability to make the FBI open up their files and bring, that's a

completely different animal. But we can tell the Court that we've given the Defense everything the FBI has given us that is discoverable.

THE COURT: All right. The question before the Court is whether or not I can compel a review of the Master Police File in this matter. And I don't believe that the Discovery Rules give me the authority to make, issue such an order. And even if I did have the authority to issue an order directed at the different police agencies to open their files to the Defense, the Discovery Rules just simply don't call for that. Mr. Davis correctly notes that the obligation is on the State's Attorney's Office to comply with the Discovery Rules. And so, the obligation is on the State's Attorney's Office to go through the relevant files obtain the relevant files and turn them over to the Defense consistent with the requirements in the Discovery Rules.

So, I am not going to order the police to comply with a review of the files by the Defense. I would note, however, that the State just indicated that they were willing to facilitate such access. So, perhaps the Defense will want to take them up on that.

MR. DAVIS: Yes. We will certainly RSVP to their invitation.

MOTION in re: PRIOR BAD ACTS

THE COURT: All right. As to E, anything

specific?

MR. DAVIS: Yeah, Judge again, it gets to the situation of, you know, what is required under the Rule. And under the Rule, you know, subsection 40263(d)(4) it says, "All evidence of other crimes, wrongs, or acts committed by the Defendant that the State's Attorney intends to offer at a hearing or at the trial pursuant to Rule 5-404(b)." So, we are talking about prior bad acts.

THE COURT: Um-hmm, 404(b).

MR. DAVIS: Right. So, at this point the State hasn't identified, if you will any specific bad acts other of Mr. Ramos or prior crimes that they intend to offer. They have provided a lot of discovery, there's no doubt. And, I guess it could be argued that some of the information contained in that discovery might fit under 5-404(b). But, there's a difference between just giving discovery that one could say is an argument that it falls under 5-404(b). And to specifically identify what is it that the State intends to offer at the trial pursuant to 5-404(b). And -

THE COURT: So, before we go too far into this --

MR. DAVIS: Yes.

THE COURT: -- Mr. Davis. What I am going to suggest to you is that we have a motions deadline coming up on August 23rd, correct?

MR. DAVIS: Correct.

THE COURT: And the State would certainly be required to file a motion 5-404(b) motion in time prior to the deadline so that it could be litigated on the dates we've set aside.

MR. DAVIS: Right.

THE COURT: So, is there anything more to be done in that regard at this point in time? They are required to tell you if they have 404(b) evidence that they want to use at trial.

MR. DAVIS: That, just to make sure that at least from our perspective that it is understood that they have to identify what it is, not just, you know, we've got a bunch of discovery and anything in there is fair game.

THE COURT: They have to file a 5-404(b) motion.

MR. DAVIS: Correct.

THE COURT: Yes.

MR. DAVIS: Okay.

THE COURT: Do you agree Ms. Leitess?

MS. LEITESS: Yes, Your Honor.

MOTION in re: GOOD FAITH STATE'S WITNESS LIST

THE COURT: Okay. Good faith State's witness list?

MR. DAVIS: I will defer to Ms. Palan on that.

MS. PALAN: All right, and Your Honor, I think that for purposes of Sections F, G, and H they all kind of

relate with regard to witnesses, who is going to be called, and what evidence is required to be provided. So, what we asked for in our Motion to Compel as far as the Witness List F was pretty simple. Which was, please provide us with the witnesses the State actually intends to call in the State's case in chief.

And the Response we received, and I just wanted to start from there, because it's important that the Court and the State understand exactly what we are asking for. The Response we received was, we provided you with a witness list. And this would have been back on August 3, 2018. And we subsequently provided witness, supplemental witness lists. And regardless of that, we've told you that anyone that is mentioned in a police report or any type of discovery that was given is fair game.

They then go on to say that we are not entitled, the Rule doesn't require that they provide the order of witnesses or which witness is going to support which count because that amounts to revealing the State's theory of prosecution, their tactical issues.

I want to make it clear, we agree the rule doesn't require that. Nor are we asking for that. The only thing we are asking for is exactly what the plain language of the rule indicates which is who are the witnesses you intend to call in your case in chief. I guess we call it a good faith

witness list because it is reasonable that thirty days after the indictment, they would not be in a position to provide that. And so, they provide us with everything.

But certainly, a year later the State has the ability to look at this witness list and the discovery and make a good faith attempt to in accordance with the rule provide us with who they actually intend to call.

I would note that the initial witness list, I manually went through and counted 263 people listed. The subsequent supplemental witness list probably added about another dozen. And of course, there's a number of people mentioned in the discovery that aren't on either of those. Clearly the State does not intend to call all those people because we designated two weeks for this trial. So, what we were asking the State to do if not immediately, certainly in a reasonable amount of time prior to the trial date and to the Motions Hearing which is, I believe, early October is provide us a list in accordance with the Rule.

Now, in good faith, at the time they intend to call so that we can determine, again looking to what witness statements and what impeachment are realistic for us to be asking for at that hearing date. I don't think we are asking for more than exactly what we are entitled to in that rule. So, that is the purpose of, excuse me, letter F. And as well as our request reiterating the Rule as witness

statements and impeachment.

THE COURT: That's G and H, right?

MS. PALAN: Correct.

THE COURT: Okay. All right.

MS. LEITESS: Would you like me to respond, Your Honor?

THE COURT: Yes.

MS. LEITESS: I find it very unusual that the State is being asked to give a good faith witness list when the Defense has not provided one witness whatsoever to the State. Including its expert witness that it's consulted with for months, and months, and months to the point where the witness had to have our discovery before could even advise the Defense whether they should file an NCR Plea or not.

But here we are when this is filed in May, a demand to give a good faith witness list. We don't even know who our witnesses are who we would perhaps counter when we find out who their witness is, who their expert is. They refuse to give it to them and Mr. Davis has actually said to me I'm not going to give you the name of that witness until thirty days before trial.

MR. DAVIS: Excuse me, can I interject here?

THE COURT: No.

MR. DAVIS: I said, we will comply with the Rule.

THE COURT: No, no, no, sit down.

MR. DAVIS: I said we will comply with the Rule.

THE COURT: Let me give you chance. I don't want anybody interjecting.

MS. LEITESS: So, we continue to update it. We don't know who they are going to call. And we are doing our very best. We are giving them everything we have and if we knew, if we could stipulate to certain things. We don't know if we'll be able to stipulate to things like chain of custody of certain evidence. Chain of custody of the bodies of the victims.

So, we have dozens and dozens and dozens of people on this list that may not have to be called is we can have stipulations. So, for us to be required to do this, first of all it's not required by the Rule. It's not required by any case law and it is really rich that it's being asked for in light of the fact that we cannot even get the name of their expert witness for us to prepare. And we have given them every single report, every single statement, every single CD of every expert, everybody that we have even talked to as an expert and we can't get that out of them.

So, Your Honor, you know if we, if we have stipulations with them if we can come to some gentleman and gentlewomen's agreement about certain things then it might be more likely the State would have incentive to give to

narrow down. But we are literally working on this case every day to figure out what we need or what we don't need to prove our case. And to say that we are required to tell exactly who we are calling and when, in what order, is just simply not required by the Rules, Your Honor. And, I'd ask you not to order, so order under a Motion to Compel because that's what this is labeled, they are asking you to Compel us to tell who we are going to call and how we are going to call them, and when we are going to call them and they won't even tell us who their expert is.

THE COURT: Ms. Palan.

MS. PALAN: First of all, we are arguing a Motion that is not the subject of our Motion to Compel. The issue with regard to identifying the expert is still pending and will be address later. We are in compliance with that Rule and we'll discuss that later.

THE COURT: So, I have a question for you. How can they narrow down their witness list until you tell them things like what you are willing to stipulate to if anything regarding chain of custody -- and I don't want this to be misconstrued as me suggesting that you ought to or have to in any way, shape, or form stipulate to anything. But if you don't stipulate to anything then it makes the State's potential witness list much longer.

So, isn't this premature at this point in time?

MS. PALAN: Well, I again, I --

THE COURT: Even a discussion about it?

MS. PALAN: -- mean, I don't believe so because first of all I think the Rules do require it. Again, we call it a good faith effort because it's not something they are 100% tied into if the situation changes. But, certainly at this point they are not calling 275 witnesses.

THE COURT: But they have to over estimate right now, instead of underestimate, right? Because you'd be standing up and screaming and yelling and rightfully so if they went to call somebody that wasn't on their witness list.

MS. PALAN: Correct. But now we are a year later.

THE COURT: Um-hmm.

MS. PALAN: And looking at the evidence the State would intend to present even if they have to overrepresent it. There may be things that they present which we say closer to trial we see this person is on your witness list, we can stipulate to this. And then they are removed. But, there's so many people on here that that doesn't apply to that I think they could whittle through this list.

THE COURT: Hm.

MS. PALAN: Our obligation is not to provide that list according to the Rules, the same Rules until thirty days before trial.

THE COURT: I understand that.

MS. PALAN: And again, I'm not asking for order of witnesses or things that are strategic, but simply realistically so we can move forward in a reasonable amount of time before a trial and not say at the Motions Hearing Date or at the Trial Date it's 275 potential people and anything else that we mention in discovery. I don't think that's reasonable. I think the Court could impose some reasonable time period before the Motions Hearing where something more realistic is presented to us. And I think that's what the Rule reflects. Otherwise it wouldn't say who they intend to call. It would say the universe of people that might be called, or potential, or possible, but it specifically says intends. And intends the plain language of that is what you have in mind or what you plan to do. And I think a good faith witness list, they are certainly capable of doing in the foreseeable future before the Motions date.

And hopefully we can go through that and streamline this as much as possible. But I disagree with State's argument that it is kind of a tit for tat at this point. I think the Rules require it and that's what we are asking the Court to do.

THE COURT: All right. I'm not, I do not believe that the State is required to pare down the witness list in

the manner in which the Defense is suggests at this point in time. The Rule requires that as to each witness the State's Attorney intends to call to prove the State's case in chief or to rebut and alibi, testimony, and it lists the information they are required to provide in regards to each witness.

And I will, I do not think that they, that included on that witness list is anybody else mentioned anywhere in this police report. So, I believe that each person has to be included on the witness list itself. And the Defense doesn't have to go digging around through five hundred pages and say oh this person was mentioned on page 399. And oh look, here's their address on page 299. And it has to be on a witness list.

But I don't think that the Rules – I think the Rules suggest that the State ought to err on the side of caution and provide more to the Defense as opposed to less to the Defense.

So, I'm not going to grant the Request to Compel as to F, G, and H, other than to order that the State, I mean, I don't think I have to order that the State is to comply with Maryland Rule 4-263.

MS. PALAN: Thank you. And, Your Honor, moving to the, I think the final issue is under –

THE COURT: Evidence for use at trial, I.

MS. PALAN: Evidence for use at trial. And again, this is probably more geared towards requirements and preparation for trial and really practical issues with regard to what we can do pretrial and not during the course of trial. And what I asked for, what we've asked for in the Motion to Compel is really with regard to three areas of evidence all which are tangible.

There's a request pursuant to the Rule that the State provide an opportunity to inspect and photograph any documents, computer generated evidence, recordings, tangible things that they intend to use at a hearing or trial. And also, with regard to property of the Defendant, anything whether or not they intend to use it, just to provide it.

The (inaudible word) of the enormity of physical evidence in this case, it does go into those three categories. We have audiovisual recordings which are computer generated records of demonstrative types of aides.

The second area would be physical or tangible evidence.

And the third would be business records or documents.

I just quickly want to give the Court a sense of why we are making this request and I know that the Court has acknowledged at previous proceedings just the tremendous

volume of tangible evidence in this case. And we have body cams from the Annapolis City Police Department, 24 different ones. Videos from seven sources. (Inaudible word) 911 calls from five, 1, 2, 3, 4, 5 different agencies. Twitter records as we discussed. Audio and video interviews of 29 civilians and 7 law enforcement officers roughly. We have the farro 360 scan electronic file of the crime scene.

As far as physical evidence, we've got CD's that were received, items recovered from the Defendant's residence, crime scene photos, autopsy photos, mail that was taken from the Anne Arundel County Detention Center, emails, Court filings in four different counties. And as far as documents, I have dozens of business records that the State has supplied and indicated they intend to use at trial including hundreds of pages of credit reports, management records, other types of documents. Again, I'm looking at probably at least 20 Citibank records, Chatsco (phonetic) Express records, bank records, just a tremendous amount of information.

I think that the Discovery Rules obligate them to indicate what they actually intend to introduce. And it is a prudent way to direct what litigation needs to be done before trial. It does not make sense to simply say, here's the universe of evidence that could fall into this category that we may or may not try and introduce. We may or may not

introduce portions of it. To simply, to not identify it until the trial date, in the course of the trial puts us in a position of having to stop the proceedings, review what they intend to introduce outside the presence of the jury, have this Court make a ruling at that moment.

What we are suggesting is, if you intend to introduce and you reasonable know what you are going to introduce that we have the ability to look at that and review it before the Motions date. So, for instance with so much video surveillance if your intention is to introduce a portion of it and we know that and say we agree versus wait that's incomplete you need to show the whole video or vice versa. That is something that practically we would want to do at a motions hearing well before the trial date.

If those redactions, enhancements, videos, or business records which are sometimes thousands of pages long aren't identified ahead of time it will just put the brakes on this trial in an impractical way for the jury. It would put the Court in a position of having to make these quick decisions. And I think it makes sense and the Rule requires it, for us to do this ahead of time to the extent that it's possible.

If you know what videos you are going to introduce or what portions or what demonstrative videos you are going to use let's have this done early October so that at least

as much as we can can be litigated and resolved so the trial will move smoothly. And that's what I'm requesting in that particular section is again similar to the witness list. But I think more practically is to be able to litigate all of this stuff ahead of time. I've had trials where you've had to do this before you even start an opening statement and it is very frustrating and it causes, I think unnecessary delays. And so, we are trying to streamline this for everyone's benefit.

THE COURT: All right. What does the State want to say?

MS. LEITESS: Your Honor, can I just answer the, we moved on from G are we not arguing any of the other part?

THE COURT: Right. I said that --

MS. LEITESS: Or G and H?

THE COURT: -- I wasn't granting the Motion to Compel in regards to F, G, and H, but the State is simply requested to comply with the Discovery Rules.

MS. LEITESS: Thank you, Your Honor.

THE COURT: In regards to those issues. So, we moved on to Evidence for Use at Trial.

MS. LEITESS: Um-hmm.

THE COURT: And, Ms. Palan argues that the Rule, and correctly that the Rule says that this type of information is what the State intends to use at trial.

MS. LEITESS: Yes. Yes, Mr. Tuomey's about to argue that part, Your Honor. But I just want to, one point of clarification under G, witness statements.

THE COURT: Um-hmm.

MS. LEITESS: I just wanted to put this on the record so that we are not at odds on this, the Defense and the State and the Court. I agree that we are going to continue to supplement all of these things. But, under the Rules for State's witnesses, "Any and all documentation of oral witness statements or law enforcement officers, hand written notes." I think the thing for notes, it's only if they -

THE COURT: Well, Ms. Leitess.

MS. LEITESS: Yes.

THE COURT: I denied the Motion to Compel.

MS. LEITESS: Okay. So, I don't have to argue it.

THE COURT: As to those issues and ordered that you comply with the Discovery Rules as they exist.

MS. LEITESS: Okay. I just didn't think that part was discoverable.

THE COURT: Okay.

MS. LEITESS: That's all I wanted to say now.

THE COURT: All right.

MS. LEITESS: Thank you. Mr. Tuomey --

THE COURT: Denying it doesn't say that's

discoverable.

MS. LEITESS: Okay. Thank you, Your Honor. I wanted to make sure.

THE COURT: But, where, the point that Ms. -- before you start speaking, Mr. Tuomey -- the point that Ms. Palan raises is a good one in terms of the conduct of the trial and what the State is required to do by Rule and what the State, what kind of agreement both sides can reach. I think she's correct, we don't want to start having mini trials within a very long trial to begin with. So, what, what can we do to facilitate the request that the Defense has made?

MR. TUOMEY: Well, in the context of a Motion to Compel, I don't think this is really the venue to do that, to be put on our heels to do that. But...

THE COURT: So, saying that it's, I'm saying that because the Defense, I believe the State has given them access to all of this information and I, I am sure they want that access. But the point is good that it would make sense to have a plan so that we are not, they are not seeing out of the mountain of evidence that the State intended to use something at trial that they didn't anticipate you were intending. And then it causes a little mini trial in the middle of trial.

MR. TUOMEY: Right. And certainly, not something

the State wants to do either. But we are not in a position now, and I don't anticipate we will be in a position to do that until we have the Defense expert's report.

THE COURT: Um-hmm.

MR. TUOMEY: Their witness list. What evidence we intend to use based on motions in limine that will be argued August 23rd. This request to do this now is just not timely. And we are not in the position to go through the evidence we do have, because there is a lot of it as Ms. Palan enumerated and say we are going to use that bank record but not that bank record, this body worn cam, but not that body worn cam. We are just not in a position to do that because of the information that is still outstanding.

I don't think it's realistic to even talk about to date to do that by until after Motions in Limine on August 23rd. Really, I mean, I don't think it is remotely feasible to do it --

THE COURT: Um-hmm.

MR. TUOMEY: -- until we have the defense expert report, the Department of Mental Health report, and any other reports that come in from experts. I think that would be grasping at straws until we actually see that information.

THE COURT: All right. What do you want to say about that, Ms. Palan?

MS. PALAN: I disagree that they are not in a position at this point at least as to the guilt/innocent aspect of the case to look at that type of physical evidence and decide what they want to use. That is not relying on our expert as to the NCR at all. And I think it may, I'm not saying tomorrow, but I'm saying sit down and figure out what this list is prior to the motions in limine because that's exactly when we would be filing, we are required on August 23rd to file our motions that are going to be heard October. If we don't know what they intend to introduce we can't raise the issue until we know. But, if we are told, look, this is what we think we are going to introduce and how we are going to do it and we have an issue with it then we file the motion.

Again, it's a good faith effort. It's not intended to -

THE COURT: And will you be prepared to share the same by that time?

MS. PALAN: As far as any tangible evidence that we have, I believe --

THE COURT: That you are intending to use, your witness list, who you intend to call at that point?

MS. PALAN: We would not be prepared to do that by August 23rd.

THE COURT: All right. So --

MS. PALAN: And the Rule doesn't require us to do that.

THE COURT: Right, it doesn't and likewise, it doesn't require them to. So, from a practical perspective, that's why I was asking the question of Mr. Tuomey from a practical perspective to circle back to the issue that you raise. It's the, seems difficult to do that, for the State to make all of those decisions without the State making some decisions.

MS. PALAN: I understand the logic behind that.

THE COURT: Um-hmm.

MS. PALAN: I thin that the State's requirements are different than ours.

THE COURT: They absolutely are.

MS. PALAN: And I don't believe one needs to wait for the other to happen.

THE COURT: Um-hmm.

MS. PALAN: I think that we could certainly litigate what the itemized, or the tangible evidence that I described to some degree. Even if it is just to the guilt/innocence phase. And have that accomplished. If other issues arise then obviously, they have an opportunity to do the same thing. But, all of this waiting and doing nothing until, you know, we are -- it shouldn't require us to have to do more than we are obligated to do under the

Discovery Rules.

THE COURT: Okay.

MS. PALAN: So, I'm not trying to impose conditions on them but not ourselves. But again, the Rules don't require that and I think there's a reason for that.

THE COURT: Um-hmm.

MS. PALAN: And I think we could certainly accomplish something at least in terms of what they've provided.

THE COURT: Okay. Thank you. Mr. Tuomey, I'll let you respond. I cut you off, so...

MR. TUOMEY: Well, I think Your Honor kind of picked up on it that the Rule doesn't require the Defense to do exactly what they are asking us to do. And it doesn't require us to do it at "X" point in time before the trial date too.

The Court asked the State to speak practically about when it could do the things the Court is asking the State to do practically.

THE COURT: Um-hmm.

MR. TUOMEY: Just for feasibility of trial, to make things work efficiently and smoothly. But they are trying to put an onus on us that does not exist in the Rule.

THE COURT: Um-hmm.

MR. TUOMEY: It's just not there. It's not there

on the page in black and white. They, if they want us to do it by a certain date, they have to give us a reason, a statute, case, why, and how and where it comes from. But, it's just not there.

THE COURT: Um-hmm.

MR. TUOMEY: Out of professional courtesy and respect to the Court we were talking about when we would be able to do this and what would be first. But this is their Motion to Compel and they've already acknowledged that it is not in the Rule and it's not in the Rule for us either. So, if they want to have a good faith conversation, we can do that, but it's going to be both ways. It's not them telling us we have to do something.

THE COURT: Um-hmm.

MS. PALAN: And just to clarify because I think it's misunderstood, I do believe it's in the Rule. And we provided that --

THE COURT: I understand.

MS. PALAN: -- it's right there, "Within thirty days of us filing our appearance or his first appearance in court." So, it is appropriate for a Motion to Compel and it is a Rule. So, this isn't something we are asking as a courtesy, it's something we are asking the Court to compel them to do. But, understanding there's reasonable limitations to it. This is in the Rule.

THE COURT: Um-hmm.

MS. PALAN: So, I think it is absolutely appropriate.

THE COURT: And by that you are saying what? The part that's in the Rule is what the State intends to?

MS. PALAN: Correct.

THE COURT: Okay. All right. I don't, I am not aware of anything other than the Rule that is cited itself. Which it certainly says what the State intends to use at trial. I'm not aware of any -- and the timeframes as it relates to the Discovery Rule, Maryland 4-263. There's no suggestion at least that I'm hearing that as to the types of physical evidence that the Defense is referring to that the State is not providing that.

What I think I am hearing is the converse. That there is so much that the State is providing that the Defense has difficulty preparing and whittling it down. So, the question is whether it's appropriate for me to grant a Motion to Compel in regards to that issue. And, I am not going to grant a Motion to Compel in regarding, to that issue.

I may however, at some point issue an Order regarding scheduling with some requirements as to whittling this down so we have a better idea of what, and so the Court has a better idea of what is going to happen when and the

scheduling of, based on at least how this is going today additional motions dates.

So, what it is my intent to do, what is my, I'm still hoping to get through the bulk of these Motions today. But it is clear to me that we are going to have to schedule at this time at least one other date between now and the October 1st date, and maybe more.

And so, I would ask that both sides discuss this issue and whittle it down at least to the best of your ability. For example, and this is just an example and not a suggestion in any way, shape or form. Chain of custody as to a particular piece of evidence. If the Defense knows that they are not going to be fighting chain of custody on a particular piece of evidence. If they are, again, not required by the Rules. But if they are able to communicate that to the State. Then I would expect that the State would say well that eliminates these ten witnesses and take them off as opposed to just saying, well thank you for letting us know.

So, I expect that in a professional manner, and I know all counsel are professional and acting very professionally in this regard. That you have that conversation so that the trial can flow as efficiently as possible. Understood?

MS. PALAN: Yes, Your Honor.

MS. LEITESS: Yes.

MR. TUOMEY: Yes, ma'am.

THE COURT: All right. With that said, it's now 12:30 and I'll be violating my own rules if I don't give our staff a lunch break, so we are going to do that at this point in time and resume at 1:30. Thank you.

COURT CLERK: All rise.

(At 12:33 p.m., recess in proceedings.)

MS. LEITESS: Good afternoon, Your Honor. Shall I recall the case, Your Honor?

THE COURT: Yes.

MS. LEITESS: Your Honor, this is the State of Maryland versus Jarrod Ramos, Case C-02-CR-18-001515. Anne Colt Leitess, State's Attorney for Anne Arundel County.

MR. TUOMEY: Good afternoon, Your Honor. Assistant State's Attorney James Tuomey.

MR. DAVIS: William Davis on behalf of Mr. Ramos. Mr. Ramos is present.

MS. O'DONNELL: Your Honor, Katy O'Donnell also on behalf of Mr. Ramos.

MS. PALAN: Elizabeth Palan, P-A-L-A-N, on behalf of Mr. Ramos.

THE COURT: All right. The next motions that I would like to address are the motions for protective order regarding -- I think we've addressed both Inmate A and

Inmate B. Inmate A is filed May 24 of 2019 and the Defense filed a response. And Inmate B is filed June 21 of 2019.

Those are the State's motions.

MR. TUOMEY: Yes, Your Honor.

MS. LEITESS: Okay.

MR. TUOMEY: Your Honor, so I know the Court has had an opportunity to read the State's filings for both protective orders. The State did file initially as Exhibits, Exhibits A, B, C, D, and E, the information that was provided for the motion to shield Inmate A. Similar information for the motion to Shield Inmate B was also provided to the Defense but because it's discovery and sealed and some other issues that we discussed with Defense counsel those weren't filed as exhibits. However, the underlying police report as redacted was provided to Defense counsel in discovery as well as audio of an interview between Detective DiPietro and Agent Brown and the individual identified as Inmate B.

The rules of discovery -- and I'd like to highlight in the Defense response because the Defense paraphrases what the State is required to provide and it changes the substantive meaning of the rule. And the Defense cites -- and they bounce back and forth between the different statutes and different subsections -- about the statements of the defendant that have to be turned over.

Specifically, the Defense as to 4-263(d)(2)(A). And there is no (d)(2)(A). There is a (d)(3) and that is for State's witnesses.

And the --

THE COURT: You mean (d)(3). Yeah, okay.

MR. TUOMEY: Right. And the statements of the defendant are 4-263(d)(1). So I think that's what the Defense is trying to argue when they say that all written and all oral statements of the defendant that relate to the offense charged including how those are provided, or how those discovered by the State be provided. And those have been provided. The statements that Mr. Ramos made to Inmate A and Inmate B have been provided. So there is no issue there. And the Rule says that all written and all oral statements of the defendant and any co-defendant that relate to the offense charged and all material information including documents and recordings that relate to the acquisition of such statements.

So the police reports, the letters, the recordings -- they have been provided. The statements that Inmate A and Inmate B relate and deem attributable to Mr. Ramos have been provided. The Defense has those.

As far as the second ground of objection that the Defense raises, any and all information whether or not admissible that tends to exculpate the defendant or negate

or mitigate the defendant's guilt or punishment as to the offense charged. Excluding Inmate A and B's names, their charges, their inmate numbers does nothing to inhibit the Defense in the conversations between Inmate A and B and what they know, heard, saw with Mr. Ramos.

THE COURT: So just getting right to the crux of the matter.

MR. TUOMEY: Sure.

THE COURT: Which is, they filed an NCR plea on behalf of the defendant.

MR. TUOMEY: Uh-huh.

THE COURT: And some of the statements that are made appear to be relevant to the NCR plea in terms of what the defendant was feeling or thinking at the time of these events. And how do they investigate that if their expert wants to speak to these folks, or if they want to speak to those folks, without knowing who they are?

MR. TUOMEY: Well, I think Your Honor has to do a balancing test to get to there with the safety of Inmate A and Inmate B.

THE COURT: And have there been threats regarding Inmate A or Inmate B?

MR. TUOMEY: Yes.

THE COURT: There have been?

MR. TUOMEY: Yes.

THE COURT: Okay.

MR. TUOMEY: And they have been provided in discovery. Specifically, Inmate B in talking with Detective DiPietro said that Mr. Ramos was trying to provoke him. He was trying to get into his head and he threatened to kill Inmate B during the course of one of those conversations.

So, Judge, I think we don't even need to get any further in that balancing test. The Court is aware of the charging documents against Mr. Ramos. The Court is aware of a large portion of the evidence against Mr. Ramos. And now the Court can do nothing but trust Mr. Ramos at his word that he harbors ill will towards at least one of these individuals and has said that orally.

THE COURT: Uh-huh.

MR. TUOMEY: So I think that the State has good cause to shield Inmate B. He has already threatened one inmate at the facility. So the State thinks that there is good cause to shield Inmate A as well. So if the Court wants me to go further than that analysis I am happy to, but I think that that is good cause to not give these names when the statements and the context have been given, and given in great detail.

THE COURT: Okay. Ms. Palan.

MS. PALAN: So -- and I'm trying to streamline based on your question and exactly what the issue is. And

in just speaking about Inmate A, first of all we believe that any statements made to this unidentified witness that are attributed to the defendant that go to the day of these events to his state of mind at the time which were received by the State's Attorney back in October of 2018 should have immediately been provided to us. If the State thought there was a protective order that was necessary we should have been arguing this back in October and not May 24 after the NCR plea was filed. Because whether they are relevant to the offense, relevant to our defense, should have been determined back then. The State took the opportunity to investigate this, decided they're not going to call this witness, but contained it again. Just looking at Inmate A, Your Honor saw the exhibits. There were statements directly attributed to the defendant and there were impressions by this witness as to his mental health which certainly is at issue. And we are certainly entitled to interview him about the statements, interview him about his impressions. Lay witnesses are relevant as to sanity and insanity and it is something that we are obligated to interview and investigate.

So we are not able to do that if we are not provided the name or all of the redacted information about this person. I think that the statement itself that we have been provided with clearly makes it relevant to our defense

at this point. Statements going directly to the impressions of his behavior and his state of mind, his sanity, things of that nature.

As to Inmate A, and I remind the Court again why it's relevant that these came out last September. These letters and this meeting with the detectives was October 1st. And reading the letters that the State received the inmate indicated that he was an inmate at the detention center, he would continue to be for at least four more months; that he had some concerns about other inmates -- not Mr. Ramos specifically but other inmates -- learning that he was providing information. Which is typically what informants are concerned with when they are inmates at the detention center. And he asked the State to take actions that would protect him in that sense.

First of all, the inmate according to the State is no longer in the custody of the detention center or as I understand it in custody anywhere. So what may have been a concern back in September presumably doesn't exist at this point. And certainly it hasn't been vocalized by this particular unidentified witness, Inmate A.

But the State puts in their motion that they have concerns should this inmate be reincarcerated in the future that there may be a danger to his safety as an informant. And there was certainly nothing attributed to Mr. Ramos as

far as personal threats made to him or things that this inmate was worried about back in September or currently.

And I think what's interesting with regard to this particular inmate, and I know the Court read those exhibits in his letters.

THE COURT: I did.

MS. PALAN: Three letters he writes. And in each one he says, please don't come to the jail. Please transport me as if I'm going to court. I don't want other inmates to know. And it is what the State is saying today is he is asking them for that protective order ten months later. But when you look at the action they took to actually alleviate the concerns of the inmate they sent, within a week, two detectives to the detention center to meet with this informant in interview room A on the first floor of the detention center. Which is essentially taking no precautions about revealing his identity. So the State itself, and I could proffer to the Court that interview room A is on the first floor, it has a clear door, and any inmate walking by probably one of the most busy sections of the inside of the jail could look over and see this witness talking to presumably what looked like two police officers. So they took no precautions that they are not asking the Court ten months later to do even though that cat could presumably be out of the bag. Anyone could have seen them.

They disregarded his request that he made multiple times. And I don't think it's fair ten months later when he's not even in custody to say, well, no, you guys shouldn't have an opportunity to talk to him directly.

So I don't think there really is a legitimate safety concern in this case. And, again, there has been nothing current that this particular witness has expressed. There has been nothing directly attributed to Mr. Ramos. And when you weigh that against the value of the statements which are alleged direct conversations and observations about the events, the state of mind of Mr. Ramos, it certainly outweighs the allegations that they are trying to protect this witness to date.

These are constitutional rights of the defendant to effectively prepare, investigate, and pursue the defense that we have put out there. And I think for that reason as to Inmate A, the Court should order the immediate disclosure of that information and unredacted information as far as its exhibits.

It is substantially the same argument as to Inmate B other than the timing. But Inmate B, I believe the date -- we received on June 24 the second motion for the first time about Inmate A (sic) who they had met with in mid-May. We didn't receive the substance of the two-part interview until I think Friday of last week. We listened to

the heavily redacted --

Court's indulgence.

THE COURT: Certainly.

MS. PALAN: They originally advised us June 21, excuse me, of Inmate B. But the substance of the recording, the first part of the recording, wasn't provide to us until I believe last week. And so we have had an opportunity to actually listen to that audio interview. Again, it was conducted by detectives from Anne Arundel County and an FBI agent who went to the exact same interview room and conducted this time a recorded audio statement. So we did receive -- it was Detective DiPietro and Agent Brown, I believe -- we did receive Detective DiPietro's report summarizing the statements that were made.

But I will tell you that in actually listening to that recording we believe there was much more substantial statements made similar to Inmate A about his observations of Mr. Ramos, conversations they had about the incident, his observations watching him in the medical cell, and clearly things such as spreading feces around the cell which wasn't included in Detective DiPietro's report. And I think something like that to not include it as relevant to what we would need to investigate and evaluate the NCR claim, it was missing until we actually listened to the audio.

As far as the allegations about Mr. Ramos

threatened Inmate B. Excuse me -- right.

As far as the statement Mr. Tuomey made about direct threats from Mr. Ramos to the inmate, the context in which those were made is that they had arguments back and forth about newspapers and things in that -- Mr. Ramos' entitlement to have certain documents, just had nothing to do with information or witness statements or confidential informant issues. But the provocative behavior and the threats were really unrelated to this. And we certainly have no ability to follow through with that and if I'm not mistaken, my recollection is that this inmate specifically said I'm not worried about that. He had no concern about Mr. Ramos actually being in a position to assault him or kill him. I think he kind of made light of that.

These are similar to the initial inmate issues that we are entitled to investigate for the same reasons that I indicated before. They go directly to our defense, to issues that we are entitled to investigate. And I don't believe either under 4-263(g) with regard to informants -- yes, they have indicated they don't intend to use either of them. But they also have to show that there is no infringement on the defendant's constitutional rights. And clearly, there are constitutional rights at stake here which I just enumerated. Our ability to directly investigate statements by the defendant that go to his mental state,

observations that were made, things of that nature.

So I don't think there is any -- the State didn't address that. So I would ask the Court to do that balancing test with regard to what we would be deprived of doing if the Court were not to allow us to talk to these people directly.

As far as 4-263 I think (m), which is the protective order, has the State shown good cause that there is a safety issue with regard to these inmates. For the reasons I just indicated to the Court, they haven't given good reasons for a safety issue. If they have legitimate concerns they ignored precautions they could have taken to make sure there was not a safety issue by transporting the inmates to the court, by somehow being a little bit more clandestine about their interview. But if the State isn't held to that standard I don't think they can ask the Court, as I said, to apply that standard to us in light of the constitutional issues that would arise if we were unable to interview these people.

So I think what is appropriate and I think it is clear in the motion that what the State should be doing at this point is providing us with the identity and all of the information they are required to under the Rules as well as unredacted portions of the statements. The audio was highly -- there's a lot of white noise, it's very highly

redacted. It's hard to know exactly what was said in that and I think we are entitled to it for both inmates for the reasons that we just argued.

Thank you.

THE COURT: Anything further from the State?

MR. TUOMEY: Your Honor, as far as the interview with Inmate A, the State got letters mailed to it. And then this inmate reached out to another agency and said that they had information directly related to a pending mass shooting. So that's why law enforcement who are not uniformed detectives, who are an agent and -- I don't know if you know Detective Creech (phonetic) but they are very good at not being recognizable as law enforcement -- went because of this letter related to a pending mass shooting. And that this Inmate A had information about that. And then there was other information that was relayed about Mr. Ramos in that follow-up with those law enforcement officers.

As far as the spreading of feces he makes it clear that that is another inmate who is housed with him while Mr. Ramos is in medical and secluded. So that there is nothing to that allegation that Mr. Ramos is spreading feces. That is a complete mixture of who these people are in the detention center. And it is abundantly clear through the audio that that is the case.

As far as the actual names of these individuals

and what they relayed, that can be given to the doctor. But these inmates themselves asked for their names not to be disclosed. They asked that it be screened or shielded, that their names not be given to a judge or the Defense attorney but just to the prosecutor in Inmate B's case. So they have relayed that information. And Inmate B is the individual who said that Mr. Ramos threatened to kill him trying to get to his head.

The fact that these individuals have had conversations with Mr. Ramos show that Mr. Ramos is fully cognizant of everything that he is doing. And the way that the Defense is trying to portray it now and conflate different individuals who are housed with Inmate B is all reduced to writing and can be provided to the Defense expert, whoever they want to give that information to.

The State has no intention of calling either of these individuals as witnesses. Their actual statements and what they have observed have been provided. And frankly, Judge, there is no -- what the State has done in getting these recorded statements and redacting them to just shield the identifying information I think is exactly what is required under the Rule in balancing the concerns that the Defense has and the concerns that the inmates at issue have relayed.

THE COURT: Thank you. I find as to both Inmates

A and B that the State has shown good cause that there is a safety issue. However, the Court is then required to do a balancing test regarding those safety issues and the information being sought by the Defense. And in this case when I review the statements that each individual supplied -- and I only have the written portions, I haven't been provided anything of an auditory nature -- but it is clear to the Court that that information may be relevant in terms of the defense being raised -- the not criminally responsible defense.

So what I am going to order at this point in time is that the State is to supply Defense counsel with the names and identifying information of Inmate A and Inmate B. Defense counsel are directed not to disclose that information to anyone including the defendant other than the Defense expert who is retained for the criminally responsible evaluation.

So Defense counsel, Defense expert. No one else including the defendant without further court order.

Clear to everyone?

MS. LEITESS: Yes, Your Honor.

MR. DAVIS: Yes, ma'am.

MS. PALAN: And do I understand that to include the non-redacted versions of all of the --

THE COURT: To include non-redacted versions.

Unless there is something in the redacted versions that is not relevant to this case. For example, if the inmates were talking about some other case that they wanted to give information on.

MR. TUOMEY: Right. And there are -- there might be one instance of that that I can think of off the top of my head. But I'll -- following the Court's order I'll bring that up with Defense counsel and I'll double-check to make sure before --

THE COURT: I don't want to create some kind of situation where there ends up being a conflict or something along that nature.

MR. TUOMEY: I don't think there will be.

THE COURT: Okay.

MR. TUOMEY: But I just wanted to let the Court know that I need to double-check.

THE COURT: All right. If there is anything that needs to be redacted or that you think should be redacted if you could discuss it with Defense counsel and if there is an issue I will address that further.

MS. PALAN: Thank you.

THE COURT: All right. Continuing along the discovery lines, the State's motion for order of production.

MS. LEITESS: Is that for the tax documents, Your Honor?

THE COURT: Yes.

MS. LEITESS: And that's the State's motion so it's our burden?

THE COURT: It's your burden, yes.

MS. LEITESS: Your Honor, when you want to obtain tax records there is a procedure that you have to follow and you have to actually get a court order for them upon motion. And that is written right there in the law, which we followed. And we submitted to the Court and counsel objected.

It is the State's position, Your Honor, that throughout this case especially since I guess the springtime and up through and pending the filing of the NCR motion the Defense has repeatedly said that their client -- his mental state is an issue for his, quote, "bizarre and convoluted behavior going back ten years." And they have made the case over and over to Your Honor in this court that that's why they need to get all these records from old tweets, from old personal documents for finances, banking records, credit card records, and so forth. And they have said that what the defendant has been doing for the last ten years is he has -- and Mr. Davis just said it this morning -- a decade of bizarre behavior. A decade of behavior.

So the State actually has information that completely rebuts that that it knows. And one of those

things is the fact that it knows from the defendant's own filings in his four lawsuits plus is that in 2012 when he sued the Capital Gazette he made statements that he had been working for the federal government for upwards of up to seven years. And that's in 2012. So that gets us back at least to 2004 or '05.

And while he is allegedly engaging in this decade of bizarre and convoluted behavior to the point where he can't control himself on twitter, according to Counsel, he has maintained a full-time job. He maintained three lawsuits plus bringing criminal charges and he defended himself with counsel on one occasion and without counsel on I believe two occasions for peace orders. All while employed.

And it wasn't until August or so of 2014 that the defendant was no longer working and was terminated from his position. We now that from the lawsuit that he brought pro se in the D.C. court suing for back pay because he claimed that his employer breached their contract by withholding $1,200 in pay that he was legally entitled to.

So not only during this decades-long bizarre behavior is he successfully arguing and winning a lawsuit against his former employer for not paying him correctly and breaching their contract, he is engaging in timely deadline filing in his lawsuits; he is going toe-to-toe with multiple

defense counsel in civil cases pro se; and he is doing all of this but yet Counsel wants to tell the Court that he is mentally ill and his behavior cannot conform to the confines of the law. So that at the time that he committed any acts alleged on June 28, 2018, that he was not criminally responsible for his behavior.

Your Honor, we believe that the tax records which we have lawfully sought under motion and court order request would go a long way to counter those arguments and show that he was a gainfully employed person; that he paid his taxes; and, most importantly, showed his wages and his steady position and jobs for at least eleven years, Your Honor, or so out of the past fifteen.

We believe that someone paying their taxes, working every day, holding down a full-time job while engaging in these lawsuits and tweeting all of these things, that these documents will directly rebut the inference that has been given in this courthouse. And, therefore, because they have made the defendant's mental state an issue in this case the probative value of getting his tax records -- which really are his wage records as well, Your Honor, his W-2s in the State of Maryland -- will confirm that and it is fair game for cross-examination.

Your Honor, the State has cited I believe in one of our supplemental lines for case law the *Harris v. State*

case, 330 Md. 137, a 1993 case, where the State did exactly that. They ordered or subpoenaed tax records for the defendant and the Defense tried to block them from being used. And the court said that they were probative because of the allegations the defendant was selling drugs at the time and not a lawful citizen supporting himself by working in a legitimate job.

And interesting in the *Harris* case, Your Honor, the State had done exactly what the State had done in this case. They had filed a motion and a judge ordered the production of the tax records. But in this case the Defense either didn't know about it or is an ex parte signor. There was no opportunity for the Defense to actually object prior to the issuance of the order. And the court said, that really is a collateral issue because these were not necessarily a critical stage in the appellant's trial. And the issue was really whether or not these tax documents could come into evidence if they were relevant at trial. And so the court found no problem with the fact that the tax records were used in the case; that they were used for cross-examination; and, in fact, the court in *Harris* said that these were very effective records to use to cross-examine the defendant on the fact that he was, in fact, not supporting himself as he had maintained.

So, Your Honor, because the defendant worked for a

federal government agency the State has no ability to get his federal records. We just don't have subpoena power for federal records. And these wage records and these tax records will rebut, we believe, the Defense's claim that for a decade the defendant was engaged in such bizarre behavior that he couldn't even maintain a job. We believe that we can show actually the opposite.

THE COURT: Thank you.

MS. O'DONNELL: Your Honor, if I may briefly. We are not trying to unnecessarily block any relevant records to NCR. We understand that because this is an NCR case that many records of Mr. Ramos over a lengthy period of time will necessarily be relevant. We have said as much. So that was not the issue here.

Our objection was to the State -- first of all, we believe that this should have been done pursuant to Maryland Rule 4-264 as a motion for tangible evidence requesting the Court to issue a subpoena and a court order. But that may be form over substance. Either way it ends up in a court order, understanding that.

But, you know, our objection simply went straight to the State's really bold assertion in their motion the defendant's tax records will clearly demonstrate the defendant's mental state in the years leading up to the events of June 28, 2018 and that he was, is, and remains an

individual capable of appreciating the criminality of his conduct and conform his conduct to the requirements of the law.

Clearly, that's just a bald statement that somehow his tax returns, W-2 forms, wage earnings up until as the State says 2014 for years before the shooting where he was -- not been employed since that time, is somehow going to right to demonstrate clearly that he is not not criminally responsible.

Obviously we are not -- we disagree with that characterization. And, in addition, in their motion other than that characterization they presented no substantive argument whatsoever with regard to why these were relevant or why they believe them to be relevant. Again, we are not trying to shield relevant records. We just think the State has to follow very basic rules which is to assert a substantial sound basis for why these records are relevant to the issue of NCR.

We believe, Your Honor, that if they do that and the Court finds that they are relevant then a proper judicial order can be issued as is required by the federal code. But their motion standing on its own with just this sort of brazen statement, this will clear up everything with regard to the NCR to look at his tax records and his wage earnings up to 2014, we did not feel was a sufficient basis

of relevancy in order for the Court to grant this order.

THE COURT: I have reviewed the State's motion and the Defense response. I would not that -- I think it was Mr. Davis but it may have been one of the other Defense counsel --that argued that the banking records could provide a view info someone's life back on April 4th before this Court. And the State notes that in their motion for production, that was my recollection as well.

I think that the tax records certainly are probative of the issue in regards to criminal responsibility. And weighing that out the probative value, I think, is substantial in this particular case given all of the information that has been supplied to the Court. And I find that Ms. Leitess laid a sufficient basis today even in argument in that regard.

So I am going to grant the order for production. Ms. Leitess, I think you have to give me an order because you are going to need one in order to obtain those documents.

MS. LEITESS: Yes. We will do that today, Your Honor.

MS. O'DONNELL: Your Honor, the only issue that we would raise is that they do go back to 2003 to the present date. And I'm not sure relevancy has been established for why we are choosing 2003.

THE COURT: Do you want to say something about 2003, how you came up with that?

MS. LEITESS: Well, we wanted fifteen years, Your Honor, to go back. We don't know if the defendant was working or not for the last couple of years but we do have information that he was working as far back as 2004.

THE COURT: Okay.

MS. LEITESS: So I'm fine if the Court wants to do -- I mean, other than -- 2004 is -- I don't know if he started at the end of 2003 but I know that from 2004 on he was working according to his own words.

THE COURT: All right. I am going to grant them from January 1 of 2004.

MS. LEITESS: Thank you, Your Honor.

MS. O'DONNELL: Thank you, Your Honor.

THE COURT: And, Ms. Leitess, I would ask you to show the order to Defense counsel and then -- it shouldn't be very complicated -- and then submit it to the Court and I'll sign it.

MS. LEITESS: Yes, Your Honor.

THE COURT: All right. Next I'd like to hear the State's motion to compel discovery.

MS. LEITESS: And that would be on the expert name?

THE COURT: It is.

MS. LEITESS: Your Honor, 4-263 for what the Defense must provide in discovery, under (e) disclosure by the Defense.

THE COURT: Thirty days prior to trial. How are you going to get around it?

MS. LEITESS: I didn't hear what Your Honor said. What?

THE COURT: Thirty days prior to trial. How do you get around that?

MS. LEITESS: Okay, well if we go down to (e)(5), insanity defense, notice of any intention to rely on a defense of not criminally responsible name and, except when the witness declines permission, the address of each Defense witness other than the defendant. Thirty days before the first trial. This is our third trial date. January, June, October. So if we want to get technical -- actually it's not, it's literal -- we've had three trial dates. They knew long before April, they've actually said it in hearings in February and March. We have identified somebody. We need this material to give it to our expert before we even decide whether we're going to file this or not.

So there is no attorney-client privilege right now in the name of this person. The name, address, or even the CV of this person. This is our third trial date. They are maintaining they don't have to tell us until thirty days.

I've had a conversation with Mr. Davis, he says, I'm not giving it to you until thirty days. He said that to me in the hallway after one of our meetings. And I don't think that's appropriate especially because this is our third trial date.

Now, how Defense responded to this is, oh we haven't finished the report, therefore we're not obligated to give it to you. And I say, they may be working on the report but they know who the person is, they have that person's CV, and they have that person's address. So giving it to us thirty days before, why it's unfair especially in light of the rule of first trial date, is that the State has the ability to look at somebody's CV and see if it's valid. To actually explore is this person who they say they are. And to consult with other people about this person's testimony. And also, to gain valuable information about this.

So to withhold that information in gamesmanship -- and that's what we're talking about here, this is gamesmanship. Because, oh, thirty days before trial. The real trial date is October. Well, maybe the real trial date was June but then other things came in between. Maybe the real trial date was back in January but then it got postponed because we had a change of counsel.

But the point is, is it fair under these rules

when they're supposed to give it within the first trial date to withhold this until thirty days? And then we get into the practical effects of what if they give us information, they finally give us a report of somebody thirty days before trial and they say, we rely upon this piece of evidence, we rely upon this witness. And the State has less than thirty days to interview that witness, gather information, subpoena records, and do all these things because they have withheld this valuable information that they've had for many, many months before trial. That's the other fundamental problem.

So what I am asking for today, Your Honor, is I am asking for the name, the CV, the address of their expert. I am asking for the Court to consider much like we were talking about during our motions in limine for August 23 that the Defense provide the basis of their expert's opinion no less than sixty days before trial, which would get us at August 30th. And the basis of the expert's opinion including materials, background things. For all I know, Your Honor, what's really unfair is the Defense expert could have records that the State is not privy to and has based their expert opinion on certain things and we don't have those records. And if they are withheld until thirty days the State is at a disadvantage.

But understanding what the rules are and what the rules permit, I believe that they are obligated to give us

at least at this time the name, address, and I am asking for the CV.

THE COURT: So your argument is that under 4-463 (h)(2) --

MS. LEITESS: It's (e) -- (e)(5). And then (h)(2), yes, Your Honor. Both. No --

THE COURT: Let me see, first (e) --

MS. LEITESS: No, first trial date, yes.

THE COURT: -- (5), insanity defense, (e)(5), (h)(2). Yes.

MS. LEITESS: Before the first scheduled trial date.

THE COURT: So your position is that thirty days the first scheduled trial date doesn't mean the trial date that is now scheduled. It means the first trial date that we scheduled. So --

MS. LEITESS: If they had the information. And they had it by June 3rd.

THE COURT: -- practically speaking, since they had not filed --

MS. LEITESS: Right.

THE COURT: -- an NCR plea at that time --

MS. LEITESS: For January.

THE COURT: -- that would have been -- that would be an impossible feat.

MS. LEITESS: Sure. For January. But it wasn't for June. And they've identified that person and filed the NCR plea I believe April 29. So before that at least. So if you don't have an expert by the first trial date, okay, then by the next -- wouldn't it be logical then by the next trial date? The next trial date was June. That was our trial date. It was on all of our calendars as the trial date. And then when it became clear that we had all kinds of other things and there was a delay in the filing of the NCR, that trial date then moved and got postponed for good cause to October 30 for jury selection. So because that NCR plea was bumped out further it ended up delaying that June trial date further.

So I'm just asking for the name -- I'm not asking for the world, I'm asking for the name and the address of this expert. And then, ultimately, not under 4-263 but for what we've been talking about all along, asking for these reports that they're basing their -- because they've already identified this expert, they're already consulting with this person, they're already doing all these things. That those reports at some point -- if I'm not asking for it today I'll be asking for it shortly -- that they should be at least sixty days before trial.

THE COURT: All right.

MS. LEITESS: And may I have one moment to review

my notes to make sure I haven't left anything out, Your Honor?

THE COURT: Sure.

MS. LEITESS: Mr. Tuomey is going to be addressing some of this in the motion for specific examination, Your Honor. But I think it ties in to what's really going on here in that there is a refusal to identify the person's name and who this expert is. But at the flip side the Defense is demanding information from the State. And they are also providing information to Dr. Patel. And they have specifically told Dr. Patel we're going to give this material, you cannot share it with the State.

So under the Rules of Professional Responsibility it's prohibited for an attorney to tell a third party not to disclose information. So Dr. Patel, who is supposed to be an independent doctor, has information that the Defense has provided to them we are not allowed to have. We are not allowed to have the name of their doctor. We are not allowed to know what they have given Dr. Patel. And at the same time earlier today they are arguing we should give them a good faith witness list.

And why this is important is we need to know what they're giving, what that evidence is. They've already identified what that evidence is and apparently it's so important that they want the independent state doctor, State

of Maryland doctor not state prosecutor, want the independent doctor to review their evidence and directing him not to provide it to us. So we also want whatever they've given to Patel to be given to us. Because under the Rules of Professional Responsibility they are not supposed to do that and direct him to withhold it. And, again, whatever they've given Dr. Patel the way it's working right now we won't know that maybe until thirty days before trial. I don't even know if Dr. Patel will be disclosing whatever it is they gave him in his report whenever that comes out.

So we're flying blind here. And it's unfair, it's an unlevel playing field when it comes to the disclosure of the expert. And that's why the State is asking for that, Your Honor.

THE COURT: All right.

MS. LEITESS: Thank you.

THE COURT: Thank you.

MS. PALAN: Judge, I'm going to address the motion that is before the Court and that would appear to be allegations of professional misconduct. Because I disagree with that but what we're here to decide is the State's motion to compel, disclosure of the expert witness if we intend to call that person at trial. There's really three areas that I think in my mind this comes down to and the Court addressed the first one initially. Number one first

and foremost, we are in full compliance with the discovery rule.

THE COURT: So let me ask you that because I -- that's the way I read it when I read it the first time. And when I re-read this the way Ms. Leitess argues it, the Defense shall make disclosure pursuant to Section (e) of this rule no later than thirty days before the first scheduled trial date. What do you say that means?

MS. PALAN: I say you can't read that in a vacuum without going back to this. The deadline for filing the NCR plea is -- statutorily initially is fifteen days after the arraignment or the indictment.

THE COURT: Right. So I --

MS. PALAN: Unless there's been cause.

THE COURT: So you asked for good cause and the State didn't object. I found good cause, I extended the deadline.

MS. PALAN: Multiple times with the ultimate deadline was April 29. So to read that literally and say you had to disclose an identity of an expert who you intend to call at trial prior to filing an NCR plea, it's non-sensical. And I --

THE COURT: Right. I agree with you on that. But does that mean that then your timeline is thirty days before -- now we have this trial date far in the future and

I have found good cause in giving you a lot of time to make this evaluation and you argued hard for it and you got it. But now you have it. But does that mean, then, in your opinion your reading of this rule is that you can hold that information until thirty days before the trial date? Because you were the one who previously argued the practicality of withholding what you know you're going to do. It causes problems in a vacuum in a trial situation. So is that what you are suggesting the law is, first of all? That you now have until thirty days before the November trial date?

MS. PALAN: I am --

THE COURT: That you can hold it until October?

MS. PALAN: I am because in this case realistically looking at the fact that the NCR deadline was April 29th, we knew at that time that June 3 or June 4 was not going to be the trial date. That was not necessarily what caused that postponement was our delay. The first realistic trial date was November 4. For reasons that the Court put on the record these were joint postponements. There a number of reasons January was postponed. There were a number of reasons June. The real issue is the hard deadline, Your Honor, made for April 29 -- and we had argued for more time --

THE COURT: You did.

MS. PALAN: You gave us this. The realistic trial date once that was that and we filed that was clearly November 4.

The other thing I want to address is I take issue with this issue of holding back or playing games. I entirely disagree with that and I will go into that for a minute.

THE COURT: Okay.

MS. PALAN: This is not gamesmanship. This is the State saying, you owe us this information and we are compelling the Court to give -- I don't believe they are entitled to get it prior to thirty days before the November 4 date. Because I think realistically and the way all morning we went through what the Rules require and the Court has made its decisions about how literally we take that. In this case we filed the NCR on April 29, that was six months prior to the realistic trial date in this case. The filing of the NCR plea is not the same requirement that the discovery rules make as far as disclosure of your expert and the things that they relied upon that the State is talking about. One is not intertwined with the other. In other words, filing the NCR plea doesn't necessarily mean everything's wrapped up and done, everything's over so now for six months we're just not going to give it to you. Which is what the State is arguing and it's just simply not

the case. And that makes sense because had there not been good cause found we would have had to file an NCR fifteen days into the case and clearly we wouldn't have had an expert or any of that.

The Rule itself in both parts as far as expert disclosure and particular to the insanity defense, it contemplates that thirty days before the trial is appropriate. And I don't think there's anything that would cause the Court to deviate from that in this particular case.

Again --

THE COURT: So is it your intent to not supply the -- first of all, do you have your expert?

MS. PALAN: We are consulting with an expert.

THE COURT: Okay. So is it your intent not to supply that information to the State until thirty days prior to --

MS. PALAN: No -- can I respond to that first?

THE COURT: Yes, please.

MS. PALAN: Because I was present at that conversation between Ms. Leitess and --

THE COURT: Well, I don't care about that conversation. I'm asking --

MS. PALAN: Well, I just want to make it clear that the --

THE COURT: -- you today --

MS. PALAN: -- conversation wasn't, we're not giving it to you. It was out of context, it had nothing -- we weren't meeting about this case. And it was --

THE COURT: I'm just asking you today, Ms. Palan. Is it the intent of the Defense not to supply that information until thirty days before?

MS. PALAN: If we can supply it earlier that would absolutely be our intention. And that is what we responded to in writing on May 30. We can't give you what the Rules require earlier at least at this juncture because we have not finished our evaluation, our investigation. And we haven't made the determination of who is going to be a witness or not. Which is what the Rule says. The way the State's motion is written is that because we've been consulting with someone we have to tell them. But that that's not how the Rule applies to Defense. The State has to tell us who they have consulted with but we don't until we make that determination.

I can assure the Court on May 30 when we wrote that letter it was in good faith that we were not concluded in our examination, our evaluation, and our investigation. And the same thing applies today. We are not intentionally going to wait until the thirtieth day to file this to make life difficult for the State. But we certainly aren't going

to piecemeal the work product that isn't completed at this point that the Rules don't require us to do. And we simply are not holding back something that they think we have.

As far as the portion of the State's motion that indicates our failure to tell the name of this person somehow will compel them thirty days before trial to have to get a postponement, just simply isn't true.

THE COURT: Well, I think dumping a big report -- and dumping maybe isn't the right word -- but providing a whole bunch of new information thirty days before trial may cause a postponement.

MS. PALAN: And I would suggest to you that part of the reason that we are still actively involved in this investigation and evaluation is because there is so much discovery and information that we have continued to get -- and the State is disclosing -- so to say okay, right now we're going to give you a decision when we got a new witness on Monday, Monday that we've never heard about before. So it is very realistic that this is a continuing investigation and that we're continuing to try and do that. And to hold us to a name when we haven't made that decision, I don't think the Rules require it and we're certainly not in bad faith sitting on information just to dump it on them at the last minute. Obviously if we were able to conclude that investigation and make that determination we're not trying

to coerce another postponement as the State says. It's not necessarily something that is in our best interest either. But they're asking for things that they are not entitled to, we don't necessarily have, and we're not required I think constitutionally to give up work product that isn't complete and that we may not use.

And who knows who is going to be -- I'll just leave it at that. We don't have the information that they are asking for right now and we are not required to give it.

THE COURT: All right. Sounds like the same argument the State made in response to your request for the witness list. So we can -- both sides can continue down this path and we'll end up with lots of issues as trial approaches. But I think that the Rule says thirty days. It says thirty days prior to the first scheduled trial date. But with the postponements of the finding of good cause, the extension of time to file, it doesn't make logical sense to this Court that the intent of that Rule would be thirty days before a trial date when the NCR decision hasn't been made.

So I am not going to grant the State's motion to compel at this point in time. I could encourage as I did with the witnesses and the other information for the Defense to provide that information as soon as it has that information and as soon as the decision is made. Likewise I

am encouraging the State to do the same. And we will visit down the road if it needs to be addressed.

All right. Then next we'll do the State's request for a specific examination and the defendant's response.

MR. TUOMEY: Your Honor, really this is a straightforward argument. As the Court noted earlier this morning, and I wrote it down because it was so pointed to this particular issue, the Defense puts psychiatric issues into the mix as to discovery. The Defense has pled not criminally responsible and filed that pleading with the Court. And under 4-263 is absolutely entitled under the Rules of Discovery for a reasonable psychiatric mental examination of the defendant.

There is nothing in any of the case law that was argued that excludes the State's option for a mental examination under 4-263 simply because the Defense filed an affirmative psychiatric defense and the Court ordered, at the State's request, a mental health evaluation by an independent third party.

The State is entitled to its own independent examination. And one thing that is abundantly clear in the cases that were cited to Your Honor -- and I know Your Honor has all of them -- but is that the State isn't only able to get a psychiatric examination when a not criminally responsible pleading is made. They don't rely one on the

other. They are not in (indiscernible), and the State can make a request when there is good cause for a mental health evaluation pursuant to the Rules of Discovery.

Your Honor, the Court of Appeals in *Johnson v. State* at 340 Court of Appeals 337 held that, quote, "the State was entitled to a mental examination whether or not appellant filed an NCR plea." So they're not handcuffed to each other.

The doctors at Perkins, they are independent third-party witnesses. And it's -- I think the State is entitled to have its own expert that we can consult that we know what they're looking at. Because we don't know what Defense is giving Dr. Patel.

I asked Mr. Davis via email to send me what they had provided to Dr. Patel and Mr. Davis had said, explicitly, I don't believe that I'm required under the rules of discovery to give that to you at this point.

I asked Dr. Patel, what are you considering. And I was informed that he was requested that the Defense -- or he had to agree with the Defense -- that he wouldn't tell us what he is reviewing as he conducts his investigation of Mr. Ramos.

So I think that that puts us even further in the realm of what the State needs is its own independent psychiatric examination of Mr. Ramos so that we know what is

being reviewed, that there is a balanced review of the information that this person is reviewing. Because we have no idea who the person is that Defense is consulting with, what that person is reviewing. Now we don't know what the other side is providing the Defense, while we have provided them courtesy copies of everything that has gone to Dr. Patel.

So I think that that is an issue for the State. The State made it abundantly clear in its motion that the Defense cannot now try to re-invoke rights that it acknowledged would be at issue in proceeding by the way of psychiatric evaluation. And Mr. Davis adamantly that they were aware of fifth and sixth amendment issues in proceeding by way of psychiatric evaluation.

Now, just the fact that an examination is conducted under *Pratt* and *Bremer* doesn't violate the fifth or sixth amendment. And once an individual waives a right for a particular purpose they cannot then come back and invoke that right just to (indiscernible) the other side. Which exactly what is happening here by trying to block the State from its own independent examination.

Your Honor, I started with it and I'll end with it. Both Criminal Procedure and the Rules of Discovery allows two separate avenues for examination. And there is no reason in any of the case law that is cited to this Court

to say that one negates the other. And we've gone over this before in the bill of particulars demand. And the courts have held that each statute, each rule, isn't to be negated by another, isn't to be completely muted or made irrelevant or superfluous. And that's what this would do. You have this doctor from MDH who is an independent doctor, so you don't get your own. It's not equitable, it's not what the Rules intend. And because the Defense has explicitly made mental health an issue in this case the State is entitled to its own examination.

I think the Court -- did the Court have a question?

THE COURT: No.

MR. TUOMEY: Okay. I thought the Court was trying to signal to the State that it had a question. So I apologize.

And, Your Honor, this, much like the handwriting example that we can draw from earlier in this case when we began by asking the Court to issue an order for a handwriting exemplar to be taken, under 4-263(f)(2), a motion filed by the State's Attorney with reasonable notice to the Defense -- which the Defense has obviously had at this point in time, we've had the filing, the response, the State's supplemental response and then the delays in getting here, they certainly have notice -- the Court for good cause

shown -- and the Defense has made this a central issue in this case. They have filed for modification, it's been granted. They filed an affirmative psychiatric pleading and an order by the Court has been issued for the defendant to be evaluated. The Court shall order the defendant to appear and submit to a reasonable physical or mental examination. And that's on the order of the State. This is a shall order, Your Honor, when those requirements are met between the good cause and the notice. And it is a central issue as the Court has said again and again in this proceeding.

So for those reasons, Your Honor, I think that the State's initial motion and supplement speak for themselves. And 4-263 is in no way supplanted by Criminal Procedure 3-111.

MS. O'DONNELL: If I may, Your Honor.

THE COURT: Yes.

MS. O'DONNELL: I could not disagree with Mr. Tuomey more. Could not disagree with him more. And I say that emphatically. He began his argument by saying this is a straightforward argument. I would submit to the Court I have reviewed extensive case law, state and federal case law. And with regard to everything that I have read should you grant the State's motion in this case it would be a matter of first impression in this state with profound constitutional implications. So I could not disagree more.

Your Honor, on May 2 the State filed State's Request for Examination pursuant to Maryland Criminal Proceedings 3-111. We attached that as Exhibit A to our response to the State's motion which, by the way, for the record clearly it's not only our objection to their request for a specific examination but it is, indeed, our reassertion of our client's fifth and sixth amendment rights which is a really important component of this argument that has not even be mentioned. As though the constitutional rights of our client have nothing to do with this.

So they filed this request for examination. They did not have to file this request for an examination. But they did. When they filed this request for an examination Your Honor, having received it on May 7, 2019, you issued an order setting forth in pertinent part having read and considered the defendant's April 29th filing titled, Plea of Not Criminally Responsible and the State's May 2, 2019 filing titled, State's Request for Examination, it is on the 7th day of May hereby ordered the State's request for examination is granted. That's exhibit B, Your Honor's order.

To date Mr. Ramos has been complying with a reasonable mental health examination that is being conducted by Clifton T. Perkins. Dr. Patel is the doctor who has been assigned to conduct it.

THE COURT: I'm going to back you up just for a second because I want to make sure that I am remembering this correctly. As to your Exhibit B, it is my specific recollection -- and please somebody correct me if I'm wrong -- that both sides consulted with each other and prepared and proposed the order that I signed regarding the examination.

MS. O'DONNELL: Your Honor, the only --

THE COURT: I recall emails going back and forth between counsel regarding that order and the phraseology to be used. Am I correct, Counsel?

MS. O'DONNELL: May --

THE COURT: I believe it was Mr. Davis, so you might want to ask him.

MS. O'DONNELL: I know, Your Honor. I am aware of what happened. It had nothing to do with the request for the examination.

THE COURT: It was the --

MS. O'DONNELL: It had to do with once the report was completed whether, in fact, that would go into the court file or go directly to this Court to be disseminated to the parties. And that had to do with issues concerning --

THE COURT: It was phraseology, too, if I recall correctly. Because it went back and forth. I'm not sure how many times but --

MS. O'DONNELL: It had nothing to do with the request for the examination.

THE COURT: What I'm concerned about is the suggestion that the phraseology meant something more than ordering it pursuant to the not criminally responsible statute. Which was clearly my intent at the time and what I believed was being proposed by both sides.

MS. O'DONNELL: Your Honor, I just want to be really clear with my language here.

THE COURT: Okay.

MS. O'DONNELL: Because it's on the record with regard to this argument.

THE COURT: Right.

MS. O'DONNELL: As you know, it is not required that Your Honor order an evaluation by Clifton T. Perkins. You are allowed to order it when an NCR plea is filed. But under 3-111 the Court may order it. We did not ask the Court to order it. We --

THE COURT: Both sides agreed that that evaluation was to occur, if I recall correctly.

MS. O'DONNELL: Your Honor, that is -- I'm sorry to take issue. That is -- we did not request the examination.

THE COURT: Right. The State --

MS. O'DONNELL: Where there was --

THE COURT: -- requested it. The Defense did not object. And both sides --

MS. O'DONNELL: We did not object.

THE COURT: -- participated in the preparation of the --

MS. O'DONNELL: And we still don't object --

THE COURT: -- order.

MS. O'DONNELL: -- to the examination. We did not object. That's absolutely clear.

THE COURT: Okay.

MS. O'DONNELL: But you can imagine from the Defense side, why would we necessarily order an outside examination instead of retaining our own experts to do an examination? So we did not request the examination. We certainly did not object to it. And as you say, specifically, Mr. Davis did have concerns and when he brought them up I believe all of the parties did about the possibility of the ultimate report being published. And that was the language that everyone was agreeing on.

But the request came from the State. And we have the pleading that says that the request came from the State. And, in fact, it did. But that's not the only dispositive aspect of this argument. So if I can continue, Your Honor?

THE COURT: Please.

MS. O'DONNELL: The State requested the

examination. The examination is ordered by the Court. Since then Mr. Ramos has fully complied with a reasonable mental health examination that's being conducted at Perkins. To date -- and I may not have exactly the specific dates -- but to date, Mr. Ramos has been taken over to Perkins on five separate occasions. I believe May 21, May 28, June 4, June 18, and July 10. And has spent over twenty hours with Dr. Patel in this mental health examination. So, in fact, he is fully complying with the Perkins evaluation. That is being done and is ongoing. And ask you know, Dr. Patel has requested an extension of time to continue this evaluation because it is an extensive one.

Your Honor, on May 28 the State, learning that Dr. Patel was conducting this evaluation, provided Dr. Patel with a USB flash drive containing voluminous discovery materials that they had cherry-picked that they believed were relevant to an NCR evaluation. That has been attached to this motion. The letter they sent to Dr. Patel and the long, nine-page I think it is, list of materials they sent is Exhibit C.

So the State is very actively engaged with Dr. Patel, submitting information they think is necessary for a reasonable mental health examination to occur. Specifically, to the neutral doctor from Perkins who has been assigned to perform that evaluation.

Since that date, that I am aware of, the State has subsequently provided Dr. Patel on June 10 with additional materials; they have subsequently sent emails with materials to Dr. Patel I believe on three additional occasions, July 12 and perhaps twice on July 15. But they continue to feed relevant materials and documentation and discovery and information to him to be part of the universe of what he is considering in making his determination on NCR.

While they're doing that, on May 31 they then file this State's Request for a Specific Examination. We want a second examination. We want a second, multiple reasonable mental health examination. We want to do it contemporaneously with Perkins' evaluation in case the Perkins opinion comes back in favor of the Defense, I assume.

The State cites absolutely no authority, and this is what I suggest to the Court that this is an issue of first impression. That no authority for multiple examinations of the defendant being authorized. None. What they cite in this case is two cases: *Hartless,* and *Thomas*. And I'm sure the Court has read in preparation.

THE COURT: I have.

MS. O'DONNELL: So *Hartless* and *Thomas* they cite, neither of which support what they are asking for. Today's argument Mr. Tuomey didn't even reference either of those

and I don't know if he's conceding that they have no application here in favor of their position. Because all he argued today was Maryland 4-263(f)(2) as the only authority for this.

So Maryland Rule 4-263(f)(2) says, on motion. Not request. In their answer they say it's really very similar to the requests we make for fingerprints or standing in a lineup. No, it has a whole different provision in it. There's on request they get to give us reasonable notice and time for things like fingerprints, photographs, handwriting exemplars which has been done. But it's a whole very separate thing when we talk about something like a mental examination.

On motion, for good cause. So this Court has to make a special finding that for some reason in this case even while there is a contemporaneous full evaluation that the State is providing all of the materials to that they desire to Dr. Patel, that we have no conclusion from yet, that there is good cause for them and for him to undergo a contemporaneous second multiple examination by a State-retained expert.

Briefly, and again because this is all in their pleadings, Your Honor, even though Mr. Tuomey didn't mention it, *Hartless* v. State does not support the State's claim at all. First of all its not an NCR case. It's a case

involving other mental health affirmative defenses. So there was no vehicle by which an examination could be ordered statutorily. And, of course *Hartless* did come down and did say that -- and this is what all this line of cases says, Your Honor, *Hartless*, *Buchanan*, all of these cases -- say look, if the Defense raises a mental health defense they can't be the only ones who own the universe of information regarding that mental health defense. The State has to have some opportunity to respond, to rebut. Otherwise there's no adversarial process. It would be like, and they raise an example, it would be like the defendant being allowed to testify but they can't cross-examine him. You know, because we would be in total control.

So all the cases say is that the State has to have some opportunity for someone independent from the Defense to examine the client with regard to mental health issues. So that they don't have to accept whatever it is we are giving them, our interpretation of our client's mental health. That's all they say.

Hartless goes on very specifically to say that in considering the State's right to have an opportunity to respond to the defendant's evidence they emphasize the need to recognize the defendant's constitutional interests and carefully balance them. So the quote from *Hartless* is, "clearly a balance must be struck that protects a

defendant's right against compelled self-incrimination and his right to due process of law while at the same time adequately assures the State will not be unfairly disadvantaged in bearing its burden of proof." Now, of course, in our case we're the ones with the burden of proof with regard to NCR. So it actually really enhances our position on this subject. They don't even have the burden of proof as they do in other affirmative mental health cases.

So, Your Honor, in *Hartless* the issue didn't ever involve multiple examination. It was one examination and even then the judge took painstaking efforts to balance the defendant's due process and fifth amendment rights against the State's interests. They would not even allow the State to have access to the expert or to the report or to any of the information concerning the defendant's mental state based on that report until the trial was almost concluded. You know, here the State is talking about how they needed months and months in advance, you know, non-compliance with the rule. Well, under *Hartless* they didn't get it until the middle of trial.

So this case, you know, if anything supports the Defense once again that it is this Court's responsibility to balance the State's interests -- whatever that may be at this point -- with the defendant's constitutional rights.

In the *Thomas* case, Your Honor, again this case is not at all dispositive in any way. In *Thomas*, it never once references Maryland Rule 4-263 as granting authority for the State to get an examination. Not once. It's a twenty-nine-page opinion. So to cite that as support for this argument is non-sensical.

In *Thomas*, after the defendant -- and this was a death penalty case as many of these cases are -- and after Thomas the defendant was found guilty. The State then asked for permission to conduct a pre-sentencing psychiatric evaluation of the defendant. Now, mind you, this was the same evaluator, happened to be Dr. Michael Spodak if Your Honor remembers him, I do.

THE COURT: I do.

MS. O'DONNELL: From Clifton T. Perkins, who had done a pretrial NCR evaluation of this client. But the State now wanted this same evaluator to come in and to evaluate the client with regard to sentencing issues. And, again, as Your Honor knows in death penalty cases mitigators, aggravators, involved very specific mental health mitigating regarding the defendant's substantial capacity to appreciate the crime. Not quite NCR but very similar.

So they asked to do this. Number one, in *Thomas* it was a different issue. It was not a second evaluation.

It was the same evaluator who was evaluating a separate mental health issue. Number two, the defendant's counsel was told about it, had no objection. Number three, Dr. Spodak specifically -- and the court says in *Thomas* -- advised the defendant of the information, gave him Miranda rights essentially, which the defendant waived and agreed to participate.

So, again, none of that is a basis for saying that 4-263 authorizes this Court to find good cause to grant over our objection a second multiple examination.

The ruling in *Thomas*, by the way, said that they did not even believe that the Defense's ultimate objections were constitutionally-based. That the Defense ultimately realized that because the State was paying Dr. Spodak that he might not be impartial. And the court came down in *Thomas* very strongly, like it has in *Johnson*, and said wait a minute, wait a minute. You're not going to get this excluded because we're not going to agree that just because you privately retain somebody that he, therefore, is not fair and impartial. And, you know, Perkins has specifically been found to be by our appellate courts a neutral body for mental health evaluations. Not a State agent, we don't claim it's a State agent. It's a neutral agent. Which, if anything, is what the State should be entitled to.

Your Honor, Maryland 4-264(f)(2) which is the only

thing Mr. Tuomey cited today as authority, again, if you look at the Rule authorizes nothing regarding a second multiple examination. It requires that Your Honor find good cause. It also says to submit to a reasonable mental examination, in the singular. It doesn't say multiple examinations, it doesn't say examinations and evaluations. It's in the singular. It requires good cause.

Our position, Your Honor, is certainly at this point the State has given you no basis whatsoever to find good cause to grant an additional second multiple examination. Our opinion would be that it would be an abuse of the Court's discretion to do so. Certainly at this point, certainly -- and I would cite the Court to a recent case of *State v. Payton* which is 461 Md. 540 regarding that issue of use of discretion.

The State is not entitled to their own psychiatric advocate. They don't get to just say, well, you know what? Perkins is impartial and neutral, we know that. We want someone who's not. We want to pay someone who we think will be more favorably inclined to us. And this issue was fully developed, Your Honor, in *Johnson v. State*, 292 Md. 405 in the context of the defense coming forth and saying -- filing an NCR and saying, we don't want a Perkins evaluation. We think the constitution gives us the right to have our own independent evaluator. Somebody who's looking at it from

the defense team's point of view.

And the Court came back and said, no you don't. You don't get that. You just get neutral and fair. That's what you get. And that same rule applies to the State. Neutral and fair. That's an examination that's being done at this time by Dr. Patel.

The *Johnson* case, Your Honor, goes on and on to cite competent psychiatric evaluation at Clifton T. Perkins. It goes on and on to say that this is what the Defense is only -- we are entitled to. And I would argue what the State is entitled to.

I believe that Mr. Tuomey quoted one line out of *Johnson*, just one sentence that says the State is entitled to its examination whether or not the Defense filed an NCR, and just left it at that. And just to put that in context, again, *Johnson* was a death penalty case. And the evaluation issue was not dealing with NCR, it was dealing with sentencing issues once again regarding mitigators and aggravators. So it was not a second examination. It was a first examination on mental health issues that were different being presented at sentencing. So it has no context whatsoever, Your Honor.

Your Honor, Mr. Ramos does assert his fifth and six amendment rights. He does not waive those by filing a mental health defense. Yes, the rules are clear in both

state and federal law that if he doesn't submit to a reasonable examination, if the State doesn't have some opportunity outside the Defense universe to rebut, he may not be allowed to proceed with his mental health defense. He's clearly doing that. You know, fine, it's twenty hours, it's not done. That doesn't mean the State gets to just come in and say well we want another doctor to do it. Why don't they have several other doctors to do it? Is there argument? And it appears to be, Your Honor, in their response that somehow by filing this he has waived his fifth and sixth amendment rights totally. So under that theory they should be entitled to multiple examinations. Why not have a lot of people that he has to submit to, additional ones? You know, under that theory Detective DiPietro could go over and interview him every day at the jail. Because he has waived his fifth amendment right by filing an NCR. That is simply not followed up in any of the case law. That is not what anyone is saying.

All those cases are saying is that you can't allow a defendant to present a mental health defense on any level without at least giving an opportunity for information outside the Defense expert. Not multiple. Not contemporaneous. Not over and over again. Just an opportunity. That's what we have and that's what we have going on at Perkins, Your Honor.

The other case that I might bring Your Honor's attention to if you haven't had the opportunity to fully read it is the Supreme Court case of *Kansas v. Cheever*. And I tell that to the Court because it is incredibly telling, the Supreme Court's way of looking at this. *Kansas v. Cheever* just briefly, Your Honor, was an interesting -- again it was a state death prosecution. And while they were prosecuting the case there were some constitutional issues with regard to the death penalty statute in Kansas. So they gave it over to the feds to prosecute. And when the Defense -- and it was in federal court -- the Defense indicated they were going to pursue a defense of voluntary intoxication. And pursuant to the federal rules the court ordered an evaluation with regard to mens rea on the ability to perform this -- the specific intent to commit the crime and the voluntary intoxication issue.

In the meantime, Kansas fixed its death penalty system and they switched the prosecution back to the state. So ultimately Mr. Cheever was prosecuted by the State and the State's Attorneys wanted to use the federal evaluation as part of the response to negate voluntary intoxication on the Defense. And they were ultimately allowed to do that based on the exact same arguments in *Buchanan* and every other case that we've been talking about is that the State has to have the opportunity to have somebody outside of the

Defense team to provide information so that they have the opportunity to rebut or counter potentially.

But what I think is interesting about the case, Your Honor, and I would draw the Court's attention is to actually the very last part of it. And it's in a footnote. But it's a very telling phrase. Where the Supreme Court is actually saying, we observe that our holding today suggest a constitutional ceiling on the scope of expert testimony that the prosecution may introduce. And I read that and I thought, that is it. It's the constitutional ceiling. It doesn't mean by filing an NCR that they get to submit our client in violation of his fifth and sixth amendment rights and due process rights to multiple State examinations; to spending another twenty, twenty-five, thirty, forty hours with whoever they choose or however many people they choose to do additional examinations. That is way beyond the constitutional ceiling.

Just to clear up, too, with regard to the Dr. Patel issue. Which is, again, a separate issue as to what we have supplied to Dr. Patel. I just want the record to clarify that what we said to Dr. Patel was that it was our position that we were not obligated -- he asked us for certain records, if we had them. The ones that we had we provided. We advised him that because they were personal and confidential records that we did not feel that we were

obligated at this time to provide them to the State. But we were going to advise the State of that. And should they wish to litigate it we would litigate it before the Court. They have not filed a motion to compel or anything or filed anything to litigate it. They've kind of thrown it into arguments here. But that's the real context of what that was. We didn't do that in a secretive way. We did it in a very clear way. We told the State, this is our position and if you want to litigate it file something and we'll litigate it. But our position is at this point Dr. Patel asked us -- and as I said we are not trying to hide records from the evaluator who is doing a neutral evaluation. And he asked if we had it, and we provided it.

If the State wants to file a motion with regard to that issue then we will be glad to respond to it. But they've kind of woven it in when it really has nothing to do with their request for an examination by someone other than Dr. Patel.

Your Honor, again, just with reflect -- and the last thing I'll say here is that with regard to a comment that Mr. Tuomey made about conflict between the Rule and the statute. This isn't a conflict type of issue. It's not that there's something in each one of these that is opposite or contrary. I don't see it that way. I just see that the Rule, which is what they are relying on to get a second

examination, does not authorize it in any way. There are many cases on fundamental statutory construction that say that this Court in trying to read a rule is to avoid constitutional conflict if it can be done. You know, in interpreting a statute. And there is a blatant conflict with the defendant's due process and fifth and sixth amendment rights in Your Honor finding good cause on the State's motion at this time to perform a multiple contemporaneous additional specific examination of Mr. Ramos over his assertion of his fifth and sixth amendment rights.

THE COURT: Thank you. Mr. Tuomey, would you like to respond?

MR. TUOMEY: Rather than paraphrasing, Your Honor, *Kansas v. Cheever*, page 94. The Rule of Buchanan which we reaffirm today is that where a Defense expert who has examined the defendant testifies that the defendant lacked the requisite mental state to commit an offense, the prosecution may present psychiatric evidence in rebuttal. Any other Rule would undermine the adversarial process allowing a defendant to provide the jury through an expert operating as proxy with a one-sided, potentially inaccurate view of his mental state at the time of the alleged crime.

The fact that the Defense has said that they told us they were providing information to Dr. Patel and that we could litigate it in court is -- I don't know where that

argument is coming from. I have the email between Mr. Davis and I where he says that it's not a discovery obligation at this time. If I could approach and have this marked because it's just -- it's not what the contact was between us in any way.

MR. DAVIS: There is no doubt I wrote this. And I wrote it because at this point in time it is our position that it is not a discovery obligation that we provide this information to the State. Okay? We have separate and different information than the State does. We've gotten it on our own. All these allegations today about we can do our own investigation and all that, we haven't been sitting on our ass doing nothing. We've been working hard, we've been investigating this case. We found information --

THE COURT: Mr. Davis.

MR. DAVIS: Yes?

THE COURT: It is still a courtroom.

MR. DAVIS: Excuse me. I apologize. Okay. And at this point in time it is our position -- and it's been our position -- that we do not have to provide this information to the State. We have every reason to believe that if we provided this information to the State they would ship it off to the person who they have waiting to do this examination before this Court even rules on it. The information that Dr. Patel asked us for is confidential and

privileged information which we provided him and at this point until Dr. Patel comes up with an opinion it is our position that we are not obligated to provide that information to the State. That's what the communication to Mr. Tuomey was. That's what the communication to Dr. Patel was.

So to accuse me of making some type of professional responsibility violation is absurd. Because it is our position -- and rightfully so -- that we don't have to provide it until we are required to do so. At this point Dr. Patel is conducting the investigation. He is conducting the examination. And he is not obligated to share that information that we shared with him so he can conduct it. And we are certainly not obligated to share that with the State until we are obligated to provide the State with information about what our expert perhaps has relied upon and anything that Dr. Patel has relied upon.

So this is not a matter of preventing the State from knowing what we have provided them. It is not an appropriate time for us to do that at this point in time. And I take exception to the character assassination that is trying to go on here that I am doing something that is inappropriate. It is -- very well. If you don't think this is appropriate then file a motion. You know how to do that. At least you should, you're a lawyer. So file a motion if

that's what it is. There's no doubt I wrote that. But I wrote it in the context --

THE COURT: All right, Mr. Davis. All right. Now --

MR. DAVIS: Yes, ma'am.

THE COURT: -- all counsel up here. All counsel.

(Counsel approached the bench, and the following ensued:)

THE COURT: I have let it go on today and I'm telling you, it's not going to happen again. One of you argues a motion, one of you responds. It's your motion, Ms. Leitess, it's your response, Mr. Davis. And it's then just the (indiscernible) that I want to hear from.

MR. DAVIS: I understand.

THE COURT: I allowed you to respond, Mr. Davis, because the comments were directed at you. Don't interrupt again. You interrupted in the middle of Mr. Tuomey's argument. All he was doing was moving something into evidence. All right? Ms. Leitess, you even did it too today.

MS. LEITESS: I did? What did I do?

THE COURT: At some point you did it as well when you interrupted.

MS. LEITESS: Sorry.

THE COURT: It's okay. We're going to let it go

for today. But I'm telling you in the future it's not going to happen. I can tell you the rule of law. It's a highly-charged, highly emotional case. I understand that. But I expect all five of you to act like lawyers in this courtroom. And the person who is arguing has their turn. Everybody else stays seated. When it's the other side's turn they can stand up, other side sits down and I'll hear from you. I will act professionally and respectfully to each and every one of you and I expect the same of you. To me, and to the court, and to each other during this process. So not again. Okay?

MR. DAVIS: I apologize for my language.

(Counsel returned to the trial tables, and the following ensued in open court:)

THE COURT: All right. Mark this as State's Exhibit 1.

(State's Exhibit 1 was marked for identification.)

MR. TUOMEY: Your Honor, I think it's imperative to also highlight in light of the last remarks by Defense counsel that the information provided to Dr. Patel is privileged or confidential. Courts and Judicial Procedures 9-109 which deals specifically in its title with communications between patient and psychiatrist or psychologist. Specifically, subsection D exclusion of

privilege. There is no privilege if -- sub-paragraph 3 -- in a civil or criminal proceeding the patient introduces his mental conditions as an element of the claim or defense. There is absolutely privilege in anything that is provided to the Department of Mental Health. They are independent, they are a third party, and they cannot be denied the ability to speak freely with both counsel for the State and the Defense. The Rule is explicit in that.

As far as -- it's also in the paragraph above that, that if someone is informed that there will be no privilege if the results of my examination are going to be shared with the Judge, with the State's Attorney, with your Defense counsel, then there is no privilege in my examination of you. And that, according to what the Defense has just said, that is their interpretation. That it is still privilege, it's still confidential, and the Rule says exactly the opposite. And we have been denied the ability to review what Dr. Patel has been presented and see if there is other additional information that we believe would balance out what the Defense has been providing to them.

The phrase cherry-picking what the State presented to Dr. Patel is completely inaccurate because we reached out to the Defense and said, if you want anything else included it in our flash drive. Do you want to include something in our flash drive. They said no. And then they went and gave

Dr. Patel their own information on their own side, which is fine. But then for us to not get that information from Dr. Patel, it's not a reasonable examination anymore. Now the Defense has their own expert-and-a-half. Because Dr. Patel is getting information from the State and the Defense, and the State has no idea what Dr. Patel is getting from Defense counsel.

Dr. Patel reached out to the State and Defense was informed of the fact that he reached out because he had issues with certain of the items on the flash drive opening, of what corresponded to what labels initially. And every time the State has followed up to provide additional information or an explanation the Defense has been included or the information that has been provided has been given to Defense, every time that we contact Dr. Patel.

Your Honor, the -- I don't feel the need to regurgitate every case that we cite and go through --

THE COURT: I have told both sides, I have read every single pleading.

MR. TUOMEY: Right.

THE COURT: I have read the cases cited. I don't need you to re-

MR. TUOMEY: I know you don't, but when the Defense says that the State only relies in argument on acts relied, one, it's not true because the Court has all of the

written filings and all of the legal argument.

THE COURT: I do.

MR. TUOMEY: But two, I think that it's imperative for the Court to recognize that in *Hartless* and *Thomas* and *Johnson* and the cases we've cited -- in *Buchanan* -- that the Defense or -- not *Buchanan*, I apologize. In *Kansas v. Cheever* which goes back to *Buchanan*, Your Honor. Each side in this adversarial process should have the ability to get an expert. And in *Thompson* (sic) -- I'm sorry. I want to make sure I get the cite right. Because the Defense talks about multiple examination. In *Thomas v. State* the expert actually goes back and does a second evaluation. And that's what becomes an issue later on.

And Defense wants to argue to the Court that because in their evaluation this is an issue of first impression would be an abuse of the Court's discretion to find that the State could get its own examination under the Rule, and the State can ask the Court to order an evaluation under the Criminal Procedure Article after an NCR plea.

THE COURT: Do you agree that it's a case of first impression? Because I couldn't find another Maryland case on point.

MR. TUOMEY: In the order. So it's not in the fact that we are entitled to an evaluation pursuant to the Rule of Discovery. I couldn't find a case that said CP

precludes the Maryland Rules. That doesn't exist. And I think that when you consider the cases that the State has cited --

THE COURT: But I couldn't find a case -- and I guess this is what I'm trying to say -- that says that where the Court ordered an evaluation pursuant to the Criminal Procedure Article that the Court also had the authority to order another evaluation pursuant to the Maryland Rules. And it's okay if there's not one. I just -- if there is one then I'm missing it -- and I don't think that there is -- let me know.

MR. TUOMEY: I don't think it's --

THE COURT: Which would make it a case of first impression.

MR. TUOMEY: Right. As far as the order.

THE COURT: It's not a bad thing or a good thing, it's just is what it is.

MR. TUOMEY: Right. But there are certainly numerous cases where the State has gotten its evaluation outside the context of a pleading of NCR. Because what we're talking about is discovery. This is a discovery right of the State.

So regardless of whether or not this pleading was made the State would have the option or the ability to make the same request.

THE COURT: Right. I was looking for one where the State was granted the order to have a reasonable mental examination in the context of an NCR case.

MR. TUOMEY: Right.

THE COURT: And I couldn't find one.

MR. TUOMEY: Right.

THE COURT: Okay.

MR. TUOMEY: So, Your Honor, I think what the argument is asking is that one be read to negate the other. We've argued this before. The Court of Appeals is clear on this. And we argued it at great length a few months ago in *Sikowski* (phonetic) citing to Whiting-Turner that the court has held that on the same subject are to be read together and harmonized to the extent possible reading to avoid meaningless, surplusage, superfluous and nugatory language. It's a mouthful, I apologize, Judge.

But in the context that we are in now and all of the information that has been provided to the Court about information that is actually getting to the Department of Health, I think it is not only reasonable but appropriate and necessary that the State does have its own expert. And an expert who has been noted is Dr. Sadoff which I think is also worth noting for the Court who is not just a psychologist, not someone who was hired by the State for no reason who we went out, who as the Defense incorrectly

argues we think that they'll be sympathetic to the State's case. It is someone who is experienced with specifically crimes of violence following escalation. Following a pathway to violence. Dealing with issues who have engaged in mass violence instances and is experience with that specifically, not a general practitioner. His CV, I believe, is twenty-five pages in length. It was given to the Defense. I am sure that the Defense when they go out and hire their own expert looks for someone who is specially suited in a case of mass violence who has experience there. Defense experts do it all the time when it involves very particularized criminal offenses whether it's violence or a sexual offense or a narcotics offense. There are experts for very different things. And MDH is an independent office that deals generally with the individuals at Clifton T. Perkins.

And there is no basis in what the Defense has argued simply because this order, this chronology, might be an instance of first impression to the State. To say 4-263 is completely subjugated because of the stance we're in now and because of the information -- or in light of rather -- the information that the Court has been presented in argument and motions today.

THE COURT: Thank you. All right. The issues before the Court in regards to this motion are the Criminal

Procedure Article 3-111(a) which indicates if a defendant has entered a plea of not criminally responsible the court may order the Health Department to examine the defendant to determine whether the defendant was not criminally responsible under 3-109 of this title and whether the defendant is competent to stand trial. That order has been entered.

The State now requests pursuant to the Maryland Rules, Maryland Rule 4-263(f)(2) on motion filed by the State's Attorney with reasonable notice to the Defense the Court, for good cause shown, shall order the defendant to appear and to be submitted to reasonable physical or mental examination.

So the question as I think is abundantly clear at this point in time, there really is no Maryland case on point in regards to this issue. And I have looked at every case that I think could be related, I have looked at state law, I have looked at federal law, I have looked at other states. And the case that I found of note -- and there were many -- was a case called *Eldridge v. State* which is 655 So. 2d 10 95, it's a 1994 case out of the Court of Criminal Appeals of Alabama. And in that case the State filed a motion and obviously the statute is not exactly the same. And there are -- which is the problem, of course, with looking at other cases in other states. But in that

particular case the court ordered an examination to address the issue of sanity that is kind of similar to this statute that we have and the law that allows the examination in Criminal Procedure. And the doctor who conducted the examination filed three reports that were conflicting. And as a result of that the court found there were reasonable grounds as per -- similar to our rule which requires good cause -- to order an examination in that case. The court ordered a second, or if you will I'm not even sure it was the second examination but another examination in that case, finding that because of the conflicting nature of the original evaluation there were reasonable grounds to order a subsequent evaluation of the defendant.

Again, their statute is not exactly the same as ours. But I likened the reasonable grounds, again not exactly the same, to the good cause required by Maryland Rule 4-263. And what would that entail assuming that I would consider ordering such a thing. And what I have determined at this point in time is that there is not a sufficient showing by the State that good causes exists at this point in time to order such an examination. There is no report from the Department of Health. There is no affidavit from an expert saying that they would need additional information, excuse me, an additional evaluation of the defendant or anything of that sort regarding the

defendant to testify. Certainly this ruling doesn't ban the State from hiring their proposed expert and having that person review whatever they want that individual to review. And testifying in regards to that or even as per the expert rules sitting in the court and listening to the testimony of the experts and testifying consistent with whatever opinion that expert may have.

But at this point in time I do not find that there is good cause for me to order a separate mental examination of the defendant pursuant to the Maryland Rule when I have already ordered an evaluation of the defendant pursuant to the Criminal Procedure.

So at this point in time the State's request for a specific examination of the defendant is denied. If the appropriate circumstances exist I may consider that ruling at a future date.

I think that leaves us with one. Correct?

MS. LEITESS: Yes, Your Honor.

MR. DAVIS: Correct.

THE COURT: State's motion for appropriate relief -- Defendant's motion for appropriate relief, State's response. Mr. Davis, it's you? Who is going to be responding for the State?

MS. LEITESS: Your Honor, just so the Court knows the Defense actually filed two separate versions. And Mr.

Tuomey and I had split them up. And then they lumped it all together into one. So Mr. Tuomey is going to argue the substantive on the jail, the substantive reasons why there is no protection.

THE COURT: Okay.

MS. LEITESS: And the State is going to argue the technical, 4-263, '4, '5, and 266, the requirements. Because when we originally divvied it up they --

THE COURT: I saw that it was divided first.

MS. LEITESS: Yes.

THE COURT: It was -- originally the Defense filed a motion for a protective order to quash the subpoena. And then filed a more comprehensive motion for appropriate relief and protective orders if I understand it correctly as it relates to the jail calls, visitor logs, and the defendant's (indiscernible) file at the detention center, so jail-type of records. And then records as it relate to the Board of Education. So I divided them up in two as well.

MR. DAVIS: I would suggest to the Court that it's not one continuous motion. It's two separate motions based upon two separate rules, statutes, things of that nature.

THE COURT: I think that if I understand correctly what Ms. Leitess is saying and it's the same way I -- yes. And I understand what you are saying. Separate law applies, separate area of law applies to each --

MR. DAVIS: Motion.

THE COURT: -- each motion. I think that what she is talking about is the fact that -- and let me see if I have this correct -- at some point in time those two motions were filed as one motion.

MR. DAVIS: I don't know when that was.

MS. LEITESS: May 29, I believe.

THE COURT: Yes.

MR. DAVIS: I'm not sure how they were --

MS. LEITESS: And the other was May 31.

MR. DAVIS: -- they are titled differently. One deals with attorney-client privilege, the other one deals with the failure for the State to follow proper procedure pursuant to Rule 4-264.

THE COURT: Now let me make sure that I am understanding. I have the motion for appropriate relief and protective order to quash the State's improper subpoenas, is the way it's entitled. That being filed May 31. Then back on May 29, motion for protective order to quash the subpoena.

MR. DAVIS: Correct. And the basis of --

THE COURT: And then --

MR. DAVIS: -- the basis of that motion --

THE COURT: And then, Mr. Davis, there's also -- well, let me make sure I have that. Okay. The other

pleading is your points and authorities. So I do have that. That's dated June 24.

MR. TUOMEY: And the State did file a line in response to that as well.

THE COURT: And then I have the State's response to the defendant's motion for protective order to quash subpoena. I'm just making sure I have it all. And that's May 30. And then the line to identify additional points and authorities filed by the State June 24.

MR. TUOMEY: Yes.

THE COURT: Is that everything?

MR. DAVIS: It is. But I think that there is a confabulation of issues here that aren't necessarily borne out by the two separate filings. In other words, the motion that was filed on May 28 is a motion for protective order to quash the subpoena pursuant to Rule 4-266 and 4-266 only. And it goes into an argument about attorney-client privilege.

THE COURT: Okay.

MR. DAVIS: And the State files a response to that. I filed no answer to that. Two days later I filed a separate motion to quash the improper, if you will, issuance of subpoenas pursuant to Rule 4-264, 4-265, 4-266. And the reason I included all of those is because all of those deal with subpoenas and how they're supposed to be processed and

the proper procedure in order to try to get the information that the State is getting. I also noted in the motion for appropriate relief the *Zaal* case, and then in the additional points and authorities that I provided to the Court they were specific to the motion for appropriate relief as it relates to 4-264 and the State's improper issuance of a subpoena and not following the proper procedures of 4-264 to try to obtain the information they obtained.

THE COURT: Okay.

MR. DAVIS: I can concede to the State's motion that it's not attorney-client privilege because it is not, after reading their response, it is not communication that we were seeking or that the State was seeking in those subpoenas. They filed their response. I read it, understood it, filed a separate motion -- I'm not sure if that's chronologically the way it happened or not. I guess I could look and find out. But the motion for appropriate relief is based upon 4-264 and the fact that the State didn't follow that. The reason I highlighted appropriate relief is because 4-264 unfortunately in its motion doesn't provide, if you will, a way of getting the relief if, in fact, one party is alleging that the other party did not follow it appropriately.

So therefore, in order to ask the Court to quash the subpoena you have to -- at least the way I read the Rule

and the way I can figure is -- the relief is stated in 4-266. But clearly the *Zaal* case doesn't have anything to do with attorney-client privilege.

THE COURT: Right. That's a different issue.

MR. DAVIS: Correct. So the body of the motion for appropriate relief is completely different than the body of the motion to quash the subpoena which was filed previous to that.

THE COURT: Okay.

MR. DAVIS: So they are not the same motion. And they are not the same issue. One is, quash the subpoena because it is a violation of attorney-client privilege. The other is, provide appropriate relief which in this case is a motion to quash the subpoena because they didn't follow Rule 4-264. They are not the same issues. They are separate issues.

THE COURT: Okay. So --

MR. DAVIS: And that's the way they were intended to be filed and that's the way they were filed. And I guess I'm not understanding the State's confusion because --

MS. LEITESS: I'm not confused.

MR. DAVIS: -- it's clear.

THE COURT: Well, I have to admit I was a little confused as well.

MR. DAVIS: Well then I apologize for that.

THE COURT: It's --

MR. DAVIS: And, again, maybe because they were filed quickly back-to-back.

THE COURT: Right.

MR. DAVIS: And then, in fact, if I remember correctly at one point in time the Court indicated that the motion that was filed, the motion for appropriate relief that was filed, I think it was filed on a Friday, that the Court had indicated that that is not in the same series of -- it is not a series of filings, if you will, I believe is the language that was used -- consistent with the motion to quash the subpoena pursuant to 4-266.

THE COURT: Okay.

MR. DAVIS: I mean, if you look at 4-264, again, there is no stated relief that the Court should provide if that is not followed.

THE COURT: Okay.

MR. DAVIS: So --

THE COURT: You argue on how you want to argue and then I'll let them respond.

MR. DAVIS: Yes, ma'am. I am not going to argue the motion to quash according to attorney-client privilege.

THE COURT: You're not arguing attorney-client privilege.

MR. DAVIS: No.

THE COURT: But you are arguing the Rule as it relates to the --

MR. DAVIS: Yes.

THE COURT: Okay.

MR. DAVIS: And then I -- I guess I would say and maybe the reason they never filed a response is because they seem to have been confused that this is a separate filing. Because they never filed a motion for appropriate -- they never filed a response to the motion for appropriate relief.

THE COURT: Uh-huh.

MR. DAVIS: And then the case law that they cite, the *McFarland* case and the other case, the *Wallace* case, that has nothing to do with 4-264. That has to do with an inmate's fourth amendment right to privacy in prison as to his clothing in the *Wallace* case, and as to a letter written by Mr. McFarland to his father from prison. And they are not even related to 4-264. They are related to the fourth amendment right of privacy for inmates in prison. And just as an aside, the other issue about that *Wallace*, in fact, if Mr. Wallace wanted to he could have turned his clothes over to another individual according to the jail procedures so that they wouldn't even have been in the jail when the State showed up. The State also got a warrant in that case to ultimately seize the clothing. So that was subject to an order. And in the *McFarland* case it's clear that for the

purposes of the safety of the institution and it was indicated in the inmate handbook that any mail sent from this facility is subject to being read ahead of time. So those issues have nothing to do with the procedural aspect of 4-264.

THE COURT: So tell me what your procedural objection is. I'll let them respond to that.

MR. DAVIS: Right.

THE COURT: And then you can take it from there.

MR. DAVIS: The State's comments earlier about their motion to get the tax records indicated that there is a procedure to be followed and that they followed the procedure. So they are aware of procedures. The State is seeking what I would suggest to the Court clearly as far as the educational records are concerned under COMAR which was cited in the motion, those are confidential records. And there is a proper procedure to be followed that is laid out by Rule 4-264 in order to try to obtain those records.

The State, in fact, did not follow the proper procedure. What they did is that they just issued a subpoena to the school board to have the records provided to Ms. Anne Leitess as soon as possible. The reason you have a -- and the way they did it is they issued a subpoena. Well, the subpoena that they issued is really a subpoena that should be pursuant to Rule 4-265 and 4-266. They are

subpoenas for the purposes of trial. And as I stated in my motion, and it's sort of elementary law school if you will, is that subpoenas for trial and subpoenas for hearings are to be filed by the parties so that the person they are subpoenaing provides the information at the hearing or the trial because the information that they have is subject to whatever is to be decided at that particular hearing or trial. That's the reason for a trial subpoena. And in the Rule, trial and hearing are synonymous with each other.

So the State filed a subpoena for June 3 for the document -- well, at least, I guess I should deal with one document at a time. Let's deal with the school records. So the school records subpoena, if you will, doesn't even indicate -- excuse me, Judge. Let me start with the jail records because my motion actually identifies the jail records first.

If you look at 3(a), on May 24 the State requested the Clerk of the Court for Anne Arundel County issue four different subpoena duces tecum. To the Anne Arundel County Detention Center seeking detention center records to produce a certified copy of any and all jail calls and visits or visitor logs for Jarrod Ramos. They issued a second subpoena to be delivered on Monday, June 3, 2019 at 8 Church Circle, Suite 200 -- which is the State's Attorney's Office -- so both of these subpoenas requested information

to be delivered to the State's Attorney's Office, not that they be brought to the courtroom for the purposes of the trial. And then they're looking for a certified copy of the defendant's base file in its entirety and the information.

So it's clear, you know, June 3 as far as the Defense was concerned was supposed to be the date that we were going to litigate the motion to compel. When we got here the Court indicated it was just a status conference to decide what motions needed to be litigated and then we ended up setting the June 24, I believe it was, date. So the June 3 date was either a status conference, certainly that was the Court's understanding, or it was the date for the motion to compel. Either way the Anne Arundel County Detention Center was not an issue in that hearing. They weren't a witness, they have never been identified as a witness for any trial. They have never been identified for any hearing as a witness to produce these records because those records at the time were not subject to the motion to compel and they weren't subject to status conference. So why are we using that date when the subpoena pursuant to what they filed is supposed to be only for trial and/or hearing according to the Rule?

Furthermore, it is clear that they didn't want it for the hearing at that point because they didn't ask that it be delivered to the courtroom. They asked that it be

delivered to the State's Attorney's Office. So it's clear that the purpose of that subpoena wasn't for the purposes of the hearing. It was investigatory purposes. They want to review those documents. There is no doubt that they want to turn those documents over to their expert.

The State has been since the time that Ms. Leitess casually walked up to myself and Ms. Palan in the hallway and casually asked, oh, who's your expert? I mean, the State has tried to make it sound like this request initially, orally was some formal request that they were making. It wasn't formal at any stretch of the imagination. Ms. Palan and I were standing outside talking about --

THE COURT: Back on this issue, please. Let's focus on this issue.

MR. DAVIS: It is part of this issue.

THE COURT: Tell me why.

MR. DAVIS: Because the reason is because I would suggest to the Court the reason that the State is asking for that information is they want to know who our expert is. They are looking for confidential information. They are looking for visitor logs. Visitor logs include personal visits as well as any and all professional visits. Professional visits include people who we, perhaps, have sent to the jail to interview our client for any various numbers of reasons. Potential expert witnesses or anybody

else. The State certainly is not entitled to that information. That is sixth amendment effective assistance of counsel information and that is confidential information in how we conduct our defense of Mr. Ramos and whether or not we are providing effective assistance of counsel. It's a sixth amendment issue to which the State is not entitled to that information. If they just wanted the personal visits then they could have delineated that. But they said any and all visit logs which means we're also looking for the professional visits that we perhaps have arranged for our client at the jail. And the only reason the jail has that information is because Mr. Ramos is incarcerated there. If Mr. Ramos was on the street that information wouldn't even be available to the State and it would be a violation of the Rules of Professional Conduct for us to give that information to the State because the Rule requires that we act confidentially in our representation of the defendant. That includes not letting the State know who, if anybody, we have seeing our client for any particular purpose. But that is the information the State is seeking. They are seeking that confidential information that goes to the level of our representation of our client.

So first of all, in order to try to get that information they need to go about it the right way. Which is to file pursuant to Maryland Rule 4-264. And in the case

of *Johnson*, which was one of the cases I believe I provided additional points and authorities for, which is 440 MD. 228, it is clear where the Court of Appeals states Maryland Rule 4-264 governs pretrial subpoena for tangible evidence in criminal cases. As we stated in *Goldsmith*, quote, "pretrial production of 'documents' or 'other tangible things' under Maryland Rule 4-264 is discretionary, requiring a motion and a court order. As such, it does not guarantee a criminal defendant the absolute right" nor does it guarantee the State or whoever is moving for it the right to subpoena and examine the private records of every private individual or entity that may conceivably possess -- it says exculpatory records because in Goldsmith it was the Defense that was moving to seek that information. Okay?

The State is in no different position than the Defense when it is seeking these third-party records that are in the possession of a third party. So clearly the procedure to have been followed would have been 4-264 which the State did not follow. They tried to subjugate around 4-264.

So before we even get to what Ms. Leitess said she is going to argue, which is the merits of why we get that, we don't get there because they never followed the proper procedure which is to file 4-264 which is exactly what we did when we are looking for evidence that is in the evidence

of Mr. McCarthy -- which we believe is in the possession of Mr. McCarthy -- of Mr. Hutzell, of Mr. Douglas, and of Ms. Kirchner. That's why we did that.

THE COURT: All right, so let me just make sure I understand what you're arguing. And I believe that I do. Is that today we never get to the merits of whether or not they get those documents that they have requested because the State has not filed a motion for subpoena for tangible evidence prior to trial in the form of Maryland Rule 4-264.

MR. DAVIS: Correct.

THE COURT: All right.

MR. DAVIS: That's -- I mean it's clear, the case law is clear. That's what governs the production of documents that they are seeking in a pretrial fashion.

THE COURT: And then if they file that you would have the opportunity to respond and we would have a hearing then on whether or not they are entitled to those documents.

MR. DAVIS: Yes.

THE COURT: If you chose to object.

MR. DAVIS: Correct.

THE COURT: All right. I understand that argument. Let me get the State's response to that because it, depending on how I rule, may make the remainder moot at the moment.

MS. LEITESS: What I think I just heard Mr. Davis

said is that any time you're trying to get records prior to trial you must file under 4-264. Well, I have in a document which I have marked as a State's exhibit where on April 24, 2019 the Defense filed for an October 1 date which is a motion hearing long in advance a subpoena for police records and then the special message, if this information is provided to our office by June 3 -- which was our hearing -- it may not be necessary for you to appear in court.

THE COURT: So let's say --

MS. LEITESS: So they just violated the exact rule that they say that --

THE COURT: Right.

MS. LEITESS: -- the State is obligated to fulfill.

THE COURT: So let's say -- let me play devil's advocate.

MS. LEITESS: Sure.

THE COURT: And say that's true and they did that. And I have seen both sides do things like that.

MS. LEITESS: Uh-huh.

THE COURT: I'm not saying in this case.

MS. LEITESS: Sure.

THE COURT: I've seen it in all my years in this courthouse --

MS. LEITESS: Right.

THE COURT: -- both sides issue such subpoenas. However, if one side then brings an objection to that --

MS. LEITESS: Sure. We have a hearing.

THE COURT: -- subpoena, we have a hearing, right? But isn't what is required that a motion -- what brings you to the hearing is that a motion for a subpoena for tangible evidence prior to trial is sought and then the other side objects and there's --

MS. LEITESS: No, because we filed under MDEC which gives them notice. And the difference between what we did when we filed those subpoenas with the Department of Education and the jail, we filed them via MDEC. They automatically got notice. They did not file --

THE COURT: I understand that they got notice. I mean we wouldn't be here, right, if --

MS. LEITESS: So they got notice.

THE COURT: -- they didn't get notice.

MS. LEITESS: They got notice.

THE COURT: Right.

MS. LEITESS: We did not get notice. And here's why. They are playing by different rules because we are in this situation. They have filed in this request for the police records on April 24 they filed it privately and not via MDEC. So we never got notice of this. The difference between their filing which is under 4-265 and which is the

practice in this court and every barred attorney who has access to MDEC is permitted to have one of these blank forms. And the way that it works is it populates the next -- it's supposed to populate the very next court date. Sometimes it works and sometimes it doesn't. And so we asked for the materials from the jail and from the Board of Education -- and I can't remember if there was anything else -- to be provided in a convenient way of, you can provide them to our office. We should have checked the box that said appear in person. But the same thing happened with the Defense, they didn't check the box that says you can appear on this trial date or on this hearing date, October 1, or -- and -- we want the subpoena duces tecum for the items.

So what they are saying is now suddenly because what we noticed is after they filed all of those motions or all those subpoenas to get the stuff from Kirchner and Brennan McCarthy and all those other people they retracted it and did it the old -- the way that they say that we should do. Because they realized, well, we can't come in and argue that they should have done 4-264 if we're not doing it.

THE COURT: Okay.

MS. LEITESS: But the practice is 4-265 and notice is given. And notice is given not so that they can come in

and say you didn't give enough time on the subpoena, or you didn't do this or you didn't put the right date in. It is given so that they can protest under 4-266 -- and that's the meat of it, Your Honor. What they arguing is form over substance. If the jail came in and said, look, State, you told me on this date it's not enough time. They are the part in interest to protest the time or the technicalities of the filing.

What they are able to do under 4-266 which is very important for the Court to consider is that upon motion of a party a person named in the subpoena or a person named or depicted in an item specified in a subpoena -- and that's the category we are under -- for good cause shown may enter an order which justice requires to protect the party or person from annoyance, embarrassment, oppression, or undue burden or expense, including of the following: that the subpoena be quashed; that it be complied with only at some designated time or place other than that stated; that certain matters not be inquired into or that the scope limited; that an examination be held with no one present except parties to the action and their counsel; that the transcript of any examination be sealed; and then hold certain items confidential like a trade secret or other confidential research or attachment.

So what the Defense has done in this case is they

are coming in and they're saying that the State has technically violated because when they issued the subpoena which they were notified by automatically in MDEC, they didn't put in the right date. Again, I was telling the Court that it is supposed to auto-populate and that's the way it works when we request the date. We requested actually for the trial date but some of it populated for the jail records on June 3 and the other ones did not automatically populate, and they are supposed to.

So we asked for the Clerk, Clerk please issue a subpoena for these items. Notice is given. They objected. We are here under 4-266. I absolutely agree that they have every right to come in here and argue, you shouldn't get his education records because of this; you shouldn't get the jail records because of that. They have that right under 4-266 to get to the meat and the heart of the subpoenas. The area that we are inquiring into, that's fair game. But they really are not -- I feel they have no standing to argue that they have technically -- really what their argument was and their response is that you didn't meet a specific deadline or you didn't put a date in.

And the reason that they're saying you have to go under 4-264 for education records, that is untrue. Because the education records under COMAR says that they can disclose records to a lawfully issued subpoena. And what

the school system has to do is they have to simply notify the student, we're sending this out. And it's different for the tax records, you require an order. For the school, the school is allowed to provide these records. And we specifically do not ask for privileged information in our subpoena, Your Honor. So if we did ask for privileged information, again via MDEC because we're filing it, they would have notice and then there would be a hearing whether or not we had the right to get privileged information.

So no matter what they're getting notice. We're looking for school records. We're looking for jail records. We're getting for those kinds of things. I agree they can argue under 4-264 or 266 for the content to limit us in some way for various reasons if they want to argue constitutional law, privacy, that sort of thing. But as far as the technical issuance this is the form. In fact, this is the only way under the current practice of law in the State of Maryland that parties are able to file if you are a listed MDEC member. This is the form that you use when you want to get these.

The *Zaal* case was very interesting. In the *Zaal* case the very first one, the very first paragraph in *Zaal* says that pursuant to a lawfully issued subpoena for school records. So that's how you get school records. You issue a subpoena. Because we have given notice, they have the

notice, they can say, hey, wait a minute. We don't think she should get the school records or the State shouldn't get it. Or, hey, wait a minute, they shouldn't get the jail records. And ask for a hearing. They filed a motion to quash. They got that.

So what they're doing is they're trying to use the technical where the party receiving the subpoena could object or say they don't have enough time or they don't have -- it's not enough time to respond and come to court. They could do that. But in their own writing, Your Honor, they say Anne Arundel County Police produce the following documents. They put an October 1 -- not a trial date, it's a hearing date in the future -- and on 4/24 they say if this information is provided to our office by June 3 it may not be necessary for you to appear in court.

So it's just another way of them saying the same thing that we asked for, Your Honor, when we say you can comply with the subpoena by delivering it to Anne Leitess. It's just another way of doing it. And I don't think that they are the party of interest to protest under that.

And, really, when we get down to it just as in the *Harris* case. The *Harris* case, ultimately the court is like making the point that you want to have some opportunity to argue whether or not information can come in. Today's hearing is that opportunity to decide whether or not these

documents are relevant and they can come in. *Harris* also talks about the fact that to be sure a party to ongoing litigation may subpoena without advance notification having been given to the other party a third parties' records for use at trial. When, however, the records sought are confidential before disclosure will be ordered the moving party must show -- usually at a hearing -- some connection between the records sought, the issue before the court, and in all likelihood that information relevant to the trial would be discovered.

That's what we're doing here. That's why they have the standing under 4-266 to argue the content, why we should be limited, why we should be prevented. Not that we have somehow violated rules that they have engaged in themselves. And I would move State's -- I guess it's State's 1 because I didn't put that other document in -- to show that the Defense is engaged in the exact same use which is the common use of subpoenas in this courthouse. We ask for items, we file it. And the difference between their filing and our filing, they gave us no notice of under MDEC. And the same 4-265 --

MR. DAVIS: I need this.

MS. LEITESS: Well, I'd like a copy of it to give to the Court to show for my argument. Your Honor, may I give it to you?

MR. DAVIS: Sure. I'm going to refer to it.
THE COURT: I know. She's moving to admit it though.
MR. DAVIS: Well, that's fine.
THE COURT: All right.
MS. LEITESS: So and just -- they don't check off that you are to testify in the case.
THE COURT: So that's State's Exhibit Number -- Madam Clerk, what is that?
THE CLERK: Is this -- is this one?
THE COURT: She hasn't labeled it at all.
MS. LEITESS: Yes. Can it be one, Your Honor?
THE COURT: I don't think it's one. Mr. Tuomey moved in an email.
MS. LEITESS: Okay. It's two then. Thank you.
THE CLERK: It's three.
THE COURT: Three.
MS. LEITESS: Oh, it's three?
THE COURT: There was something else. All right.
(State's Exhibit 3 was marked for identification and admitted into evidence.)
MR. DAVIS: If I could --
MS. LEITESS: Let me make sure I have completed my argument.

THE COURT: Just one second and then you can respond.

MS. LEITESS: So, Your Honor, that is my argument as far as the technical objection to the issuance of the subpoena. We've gotten to have the opportunity to argue this. Counsel will have the opportunity to argue the substance of it. And as far as the confidentiality and the relevance of those various records, Mr. Tuomey is prepared to argue that if we get to that.

THE COURT: Okay.

MS. LEITESS: Thank you.

THE COURT: Mr. Davis.

MR. DAVIS: If I can see --

THE COURT: Yes.

MR. DAVIS: -- that subpoena again.

THE COURT: You can.

MR. DAVIS: So I just -- I find it -- I don't know what the word is. But -- astounding that the State is going to sit here and say we are playing by the same rules that we are now objecting to. Okay?

And we've already introduced some of this evidence in some other motions. But if you'll recall Ms. O'Donnell was arguing when she was arguing the statements of the defendant. And she referenced a letter which was one of the Defense exhibits in her argument that is dated February 28.

And this is a letter from the State, it's in the third paragraph. I do not know if there are additional documents regarding this case number. I will inquire of the police department. But this may be better addressed by you -- meaning us, the Defense -- serving a subpoena duces tecum to ensure that you get all of the relevant documents directly from the source. And then I responded on April 22 saying, in the past when filing subpoena for similar-type police department records we have received correspondence from the police department that the subpoena is improper and that we need to go through the State's Attorney's Office as they consider this discovery. And then the subpoena was issued April 24.

So the State invited us to issue this subpoena. Which is why we did. Because they were clearly not giving us the information that we thought that they had. And they told us to issue a subpoena. Okay. Therefore, to say that they didn't have notice that we would issue it isn't accurate. And to say that we are playing by the same rules or playing and now we want to change the rules isn't accurate. This subpoena was filed almost two months after the State encouraged us to do so. That's why it was filed. It wasn't filed to get around 4-264. It was filed at the State's suggestion because I don't have it, subpoena it, you go get it yourself. Which we thought was inappropriate and

we said so on April 22 and, therefore, after not hearing from them April 22 we filed the subpoena on April 24.

So for the State to stand up here and say that we're now playing games when it was filed at their suggestion, that's not appropriate to make that argument I would suggest to the Court. The bottom line is, the *Johnson* case states what it states. Which is, you know, 4-264 is the proper way to try to obtain the information that the State is seeking in this case. The records are clearly confidential. And, yes, I agree that COMAR says that the school records can be turned over on a properly issued subpoena. Our whole point is that their subpoena that they issued wasn't properly issued. So it's not a properly issued subpoena. Because it didn't -- it wasn't the issue of a hearing or of a trial. Let the State stand up here and say that they want to use that information at trial. They don't want to use it at trial. They want to get the information from the school records in order to give it to their expert so he can review it. Or so that Dr. Patel can review that information. Because it goes to their rebuttal of the NCR defense. That's what they want it for.

As far as the records from the jail are concerned, again, the *Wallace* and the *McFarland* case have nothing to do with sixth amendment right to counsel and the privacy and the confidentiality of that information as it relates to the

visitor logs which would include any and all professional visits that we have had people see our client or not see.

So 4-264 is clearly in play. For the State to argue that we're playing by different rules is not appropriate when that subpoena that they referenced is filed at their suggestion. And to say that we didn't give them notice, well, you're the one who told us to file it so you had notice because you told us to do it. And we did.

As far as MDEC is concerned, I did not get a -- I did not get a -- it wasn't through MDEC that I discovered those subpoenas had been filed. I was in the file looking at documents preparing for whatever it was that we had coming up. And then I noted subpoenas issued. They were in MDEC so should I have gotten notice? I guess so. I will agree, I don't do the filing. I have somebody else in my office file for me. So when you do file I do believe that you have to click off service notices in order to make sure that those people get the notice. I don't think it is served automatically to people. I think you have to identify the people that you want to be served with this particular document.

I just had a case recently where I am the attorney of record. Mr. Tuomey filed something -- it's an completely unrelated case. But I never got a copy of it. Never got notice that I was -- although I am the attorney of record

right now, it's a three-judge panel case. And I never got notice that something had been filed by the State because I wasn't in the service contacts. I wasn't clicked-off or something like that, even though I was the attorney of record at this point in time.

So 4-264 is a mechanism by which the State needs to proceed in order to obtain what they're looking for which gives us an opportunity, five days, to file a response to their motion for tangible evidence. And that's when we get into the meat of the issue at that point in time.

THE COURT: All right.

MS. LEITESS: Your Honor, Counsel --

THE COURT: Hold on.

MS. LEITESS: -- referenced the *Johnson* case.

THE COURT: Mr. Davis is still standing up so I don't know if he's done.

MS. LEITESS: Oh, okay. I'm sorry.

MR. DAVIS: I think we get notice that a subpoena has been served, we don't necessarily get notice of who it has been served to. Or that the State is asking for it.

THE COURT: All right. As to the issue of the subpoena itself. It is clear to me that the proper way to do this is pursuant to Maryland Rule 4-264, file a motion for subpoena for tangible evidence prior to trial. The other side gets served, they can file a motion in response.

And then that brings us into the courtroom.

In this case it happened a little bit differently. The subpoena was issued. Mr. Davis did become aware of it. I don't know what boxes were checked or not checked in MDEC. He filed an objection. He filed case law. The State filed case law.

It seems to me -- and I find -- that it would be the ultimate in form over substance for me to say that the Defense wasn't made aware of this and that the State had to go back and file essentially the same thing but title it a little different and refer to a different rule, and send the Defense the same notice that they are already aware of and then they would file the same objection that they have filed with the court and then we would come in here and I would hear arguments that are virtually the same as what I suspect I am about to hear regarding the confidential nature of the jail records and the school records.

So with that said, in regards to that issue I am going to allow it to proceed to the Defense objection of the --substantive objection as to the issuance of the subpoena finding there is no actual prejudice as a result of allowing it to proceed in this manner. Although as to form it is not technically correct.

So I will say if the Defense as a result of my ruling wants a little bit more time I would allow that.

MR. DAVIS: Well, and I guess that's my concern. Is if we had done it properly, if the State had done it properly, then I would know what their argument is as to why this information is relevant and why they think they are entitled to it. But because they simply filed a motion -- excuse me, a subpoena -- I don't really know what their argument is. I don't like pre-supposing what another party's argument is because they may have other issues that I have not thought of.

THE COURT: Well --

MR. DAVIS: So it puts us at a disadvantage in me being able to respond. Because that's really what the situation should be, I should be responding to their request for these documents. I --

THE COURT: But wouldn't the State's -- what the State filed -- doesn't the State articulate that in the pleading that's titled State's Response to Defendant's Motion for a Protective Order? So if your argument is that the burden is on the State to articulate I think that is a fair argument and I would require the State to go first so that you could respond to that. I think that is reasonable.

MR. DAVIS: Well, I think the form would require that.

THE COURT: Uh-huh.

MR. DAVIS: In other words, form over substance.

The form -- and the Court has indicated the proper way would have been to go 4-264.

THE COURT: Right. Would have been that the State would have to --

MR. DAVIS: Yes.

THE COURT: -- lay down its foundation as to why it is entitled to those --

MR. DAVIS: Yes.

THE COURT: -- documents. So I think that's a fair argument to make. I don't think, however, because I am looking right at the State's Response to the Defendant's Motion for a Protective Order, I do think the State lays out the reasons why they believe they are entitled to these documents. So I don't think there is any surprise to the Defense as to why the State believes it is entitled to those documents. However, as I indicated, if you want a little bit more time -- and I'm not talking about a lot more time -- to prepare your arguments in that regard then I will allow that. You can consult with counsel if you wish.

MR. DAVIS: No, I don't know that I would fully agree with the Court on the fact that their argument is here. I mean, their argument I guess is in *Wallace* and *McFarland* from what I can tell as far as it relates to the prison records. I'm not sure what their argument is as it relates to the school records.

THE COURT: Well, let me ask the State. Let me let the State ante in. Would the State prefer to -- given how I have ruled -- would you prefer to because I am going to put the burden on the State to articulate the reasoning would you prefer to have an opportunity, again, it wouldn't be in the far distant future but in the near future to prepare that? And then I would require you to file something so that the Defense is aware of your reasoning if it is different than what you --

MR. TUOMEY: Could we just have a moment, Your Honor?

THE COURT: Sure.

MS. LEITESS: We're ready now, Judge.

MR. TUOMEY: Judge, we are happy to argue it today, Your Honor.

THE COURT: Okay. Let me hear from the Defense.

MR. DAVIS: That's fine, Judge.

THE COURT: Okay. All right. So both sides? But I am going to have the State go first.

MR. TUOMEY: Okay. And did the order indicate the jail records first or the --

THE COURT: So both sides agree. Defense goes first -- I mean State goes first, then Defense, then the State.

MR. DAVIS: Sure.

MR. TUOMEY: Your Honor, in the motion that we did file -- there is the State's response that we filed on May 30 and I guess I had the same confusion that the Court did in response to Mr. Davis' filings.

The records in the possession -- I'll start with the jail records because that's what we started with in the filings. The records aren't privileged. They are not confidential. And the case law that is cited is very specific to that particularly *Kutchen (phonetic) v. State*, a person claiming a privilege has a burden to prove that these are privileged. And we're not looking for privileged communications between anyone at this point. And Mr. Davis has already acknowledged it is not attorney work product. So that it takes out privilege and puts us into confidentiality. And Mr. Davis in his response -- in his line, I apologize -- the third response, his last reference is the Rules of Confidentiality under the Rules of Professional Responsibility.

And, Your Honor, the confidentiality is on Defense counsel. It is not on a third party State agency. The jail has an interest just by the nature of what it is in keeping track of who's coming in and who's going out and keeping records of that much like Wallace and McFarland had their own penitential interest in maintaining the records and they did in doing what they did in those instances.

It is important that there is no privacy interest in who comes and goes at the detention center for any defendant. We are not asking for any confidential information. And if the Defense argues that there is a confidential element to those records, well, it's just not there. Because we are not asking for anything that Defense counsel has done. We are asking for objective records taken by a third party State agency. And there is no basis to preclude or mute one State agency, the detention center, from providing objective records of what occurs in their facility to the State. No basis -- or, no confidentiality exists for that claim.

So the State is absolutely entitled to those records, Your Honor. There is no confidentiality involved in who and comes and goes to a detention center. Particularly because we are not looking for any communication between any individual or individuals who were there.

As far as -- Court's indulgence. Your Honor, as far as the school records. And the Court has already referenced back to prior proceedings we've had where the Defense has talked about how in this particular instance how bank records could provide an insight into someone's life. Certainly educational records can do the same. And in our conversations with mental health experts, educational

records are highly noted as something that they would like to consider. They can be probative in their evaluation as to mental health or any longstanding mental health issues or any mental health issues that might have been noted or could be seen through grades slipping or whether or not someone is an excellent student. So I think that they are probative in that regard and that's a reason why they are of interest to the State.

As far as why I talk about the confidentiality, Your Honor, there is no burden on the party asking for a subpoena. And Defense cited to *Harris v. State*. In a footnote 14 the Court actually says, the party seeking the issuance of a subpoena need not justify the request. He or she is not required to show cause why it should issue. The only time that a party has to show cause why a subpoena should issue is if the underlying material is confidential or privileged.

So that's why I kind of moved on to the school records. Since there is no confidentiality or privilege in the jail records the State is under no obligation to show why we are asking for those records in particular. As opposed to the educational records where we have been informed expressly that it is going to be helpful to us in conducting a psychiatric evaluation. So if you can get these, then please demonstrate that. I think that Defense

has been clear that there are a lot of records that experts would like to consider in these instances and these are among those that have been indicated to us as records experts would like to consider.

Your Honor, as far as COMAR as cited by Defense, COMAR 13A.08.02.19 specifically permits under subparagraph 9 to comply that disclosure -- prior consent for disclosure not required, that the educational system or school can forward records of an individual or a previous student in order to comply with a judicial order or a lawfully issued subpoena if the local school system or educational institution makes a reasonable effort to notify the parent or guardian or the former student themselves. And it is all -- Former Chief Justice Bell actually says in the beginning of that opinion -- or notes -- a properly issued subpoena. As Ms. Leitess already indicated.

So I think, Your Honor, as far as the sum and substance and the meat of what is being sought for the jail records they are a third-party State agency, we are entitled to get them. As far as the educational records there is certainly good cause for those to be provided by the educational facilities. Court's indulgence.

So the information that the State has received, and has been provided in discovery to Defense counsel, is that Mr. Ramos is a very intelligent person. His ability to

perceive and what he does based on knowledge that he has is probative to experts as well. If Dr. Patel doesn't already have those records we would certainly like to get them to him. And his intelligence in planning what is currently charged against Mr. Ramos and his ability to understand and perceive, plan and execute his actions in this case are certainly probative. And his ability to understand and what could be reflected in those records would additionally be incredibly helpful to a psychiatric expert in conducting their examination or findings for them to explore.

So I think, Your Honor, for those reasons -- Your Honor, I will submit on that at this point.

THE COURT: Mr. Davis.

MR. DAVIS: I would suggest that the State in its argument is missing the point that the Court just made. Which is, what is the good cause for me to allow you to have the visit logs at the jail. They're saying, well, they're not confidential records, there is no right of privacy at the jail, and things of that nature. That that -- therefore, give them to us. That's not good cause as to why you are entitled to them. Especially when what they are looking for isn't just visits of personal nature. What they are looking for are professional visits.

If the Court were to grant this think of the chilling effect it would have across the state. If the

State was allowed to go and find out who the Defense was consulting, who the Defense would be having see their clients for purposes of expert witnesses, professional witnesses, things of that nature -- you would be, in effect, preventing the defendant from having people -- having inmates or defendants seen by potential expert witnesses.

THE COURT: So can --

MR. DAVIS: If that information is available --

THE COURT: -- I ask you a question?

MR. DAVIS: -- to the State, then why would we do that?

THE COURT: So let me ask you a question, Mr. Davis. You use the words good cause. And in my mind we're talking about two different -- and I think in my mind and consistent with the law -- two different types of records in terms of privilege and confidentiality.

MR. DAVIS: Uh-huh.

THE COURT: So what in your opinion is the standard by which I need to make that determination? Is it good cause? Is it something else? Because I think it's all -- in *Goldsmith* the line of cases say something else in terms of the educational records.

MR. DAVIS: Uh-huh.

THE COURT: So what am I to weigh? What am I to measure? Where does it say good cause is what I am required

to look at in determining this?

MR. DAVIS: Well, I mean, I think if you just look at the historical nature of defense -- in criminal defense they have a right to have confidentiality in the preparation of trial. And witnesses that we have or potential expert witnesses, professional visits, things of that nature that we send to the jail to see our client is protected in the defense of the individual constitutionally based on fifth and sixth amendment grounds. Not just that, but now they also get information about how many times we have visited our client as well? Because every time I walk into that jail I am logged in. So they get that information as well? How many times we have seen our client? Which one of us has seen our client? When we've seen our client? Things of that nature.

Just because he's at the jail doesn't therefore open the door to allow them to look inside the defense. And that's what they're looking to do here.

THE COURT: So do the jail records indicate when something is a professional versus a personal visit?

MR. DAVIS: Yes. In fact, we have to make a specific request to the jail in order to get a professional visit in there. They won't let -- I mean, I can't have a professional visitor, say just go to the jail and see my client. Because if he's not the client's attorney or if

he's not an attorney with the Public Defender's Office or an attorney, that person is not getting in. We've had arguments with the jail about getting our social workers into the jail to see our clients on our behalf. We finally solved that problem with the jail in the sense that they don't need permission because they are part and parcel of the Defense. But any time there is a professional visit for any client, not just Mr. Ramos, for any client we have to ask the jail for permission, we have to tell the jail when that person is coming, who that person is, what the purpose of the visit it, and then that has to get approved by the administration. And then when the person actually shows up that information is recorded.

So there is no doubt that it is confidentiality. To reveal visitation is a violation of the fifth and sixth amendment and also attorney work product. Mr. Tuomey talks about confidentiality, if you will, in the Maryland Rules that's confidentiality to the attorney and we're not subject to that. The jail is not subject to that. But if you look at the comments section it even goes on, the principle of client-attorney confidentiality which is in the Rule, and this a Rule that they're talking about, the principle of client-attorney confidentiality is given effect by related bodies of law. For example, attorney-client privilege, the work product doctrine, and the rule of confidentiality

established in professional ethics. The rule of client-attorney confidentiality applies in situations other than those where evidence is sought from the attorney through compulsion of law. The confidentiality rule, for example, applies not only to matters communicated in confidence by the client but also to all information relating to the representation whatever its source. An attorney may not disclose such information except as authorized or required by Maryland Attorney Rules of Professional Conduct.

I mean, they're looking to get around that by just saying, we're entitled to it because he's at the jail. I mean, if they were to file this motion and say, Mr. Davis, we're asking the Court to compel the Defense team to let us know who has seen their client. There is no way the Court would grant that motion. That's essentially what they're doing. But they're saying that Mr. Ramos sits differently than other people who are outside of the jail. People who are able tom make bond or people who are not held without bond, they're not subject to the same rules and regulations of attorney-client privilege and attorney work product, of sixth amendment right to counsel because after all they're not in custody. So then we raise a whole equal protection of the law issue there as well because now we're treating people in jail differently than we are treating people out of jail.

So to say that they are entitled to that information would just literally flip attorney-client privilege and confidentiality, sixth amendment right to effective assistance of counsel on its head. Because really if I know the State is going to be entitled and they are going to be able to get that information am I going to want somebody to go see my client? No. I mean, it's the same rules that we're not required to tell them who we consult with. There's nothing in the Rules that require that. But now they're getting that information if the Court grants this subpoena and allows them to have that information. They are not entitled to that. But they're saying well, we are entitled to it because he's in jail. That's not an appropriate response. It's not an appropriate answer. *Wallace* and *McFarland* have nothing to do with it.

The other thing is, in the *Harris* case the State has provided this Court with an incomplete quotation from that case. It says, to be sure a party to ongoing litigation may subpoena without advance notification having to be given to the other party. Well, Mr. Tuomey stopped it there but actually the quote goes on. A third party's record for use at trial. This isn't to be used at trial. They are looking for this for a pretrial investigative purpose. So while I agree if you issue a subpoena for trial that's different. Not that they would be entitled to this

information at trial either, because they wouldn't be. Because again it is protected by the attorney-client confidentiality. It is protected by the sixth amendment right to effective assistance of counsel, to the fifth amendment right, and to a whole host of other constitutional due process and equal protection under the law and things of that nature. And if the Court were to grant this it would just severely undermine throughout the state and perhaps reverberate around the country that all of a sudden some court in Maryland is allowing the State to see what expert witnesses and professional witnesses their client has seen and how many times the lawyers have seen them.

That's really where this might go if the Court were to grant this at least as it relates to the jail records and the visits lots. And I think, quite frankly, from our perspective, for the State to even ask for that is just violative of the rules of what a State's Attorney's Office is supposed to be doing as far as seeking justice. You're looking to look into the Defense case. And there is nothing in the rules or the constitution that allows you to do that.

THE COURT: All right. I hear you as to the visitor logs. Talk to me about anything else you want in regards to the detention center records and the school records.

MR. DAVIS: Well, there has been no argument at all as to why they are entitled to the base file or what information is in the base file as to why they should get any of that information. I haven't heard any argument that relates to that. I've heard arguments that relate to the visitor logs but not to the base file. They issued a subpoena but the State hasn't made any argument to that.

As far as the school records are concerned, that becomes an issue and the State is right in the sense that we have been talking about a ten-year situation of mental health disability and things of that nature. The school records go well beyond that ten years. Now we're going back to the time that Mr. Ramos graduated from high school which is well beyond the ten years at that point in time. So I don't know that they have actually established the relevance.

I will agree that those records can be -- pursuant to 4-264 they're confidential records I would suggest to the Court under COMAR. And if the Court orders then I would suggest that the Court look at those in camera before they are turned over to anybody. But having said that, our argument would be that those records precede what we have perhaps identified as the window of mental health illness in this particular case. So, therefore, I would suggest to the Court that they are not relevant.

Also, we all know -- at least we should know -- that mental health disability can, in fact, come into play after somebody's 18-year-old birthday. Paranoid schizophrenia, schizoaffective disorder, the onset of those is usually between the ages of twenty and twenty-five years of age which is subsequent to Mr. Ramos's time in high school. So I don't believe that the State has met its burden under 4-264 in showing that those records should be turned over to the Court.

I will say there's two subpoenas to the school board. They are looking for the same records, they just subpoenaed two separate people.

THE COURT: Right. I saw.

MR. DAVIS: So there is only one real set of records there.

THE COURT: One issue. Okay.

MR. DAVIS: So I haven't heard any argument as far as the base file is concerned. And they have proffered nothing as to why information in the base file would be relevant to their case at this point in time.

THE COURT: Mr. Tuomey.

MR. TUOMEY: Sure, Your Honor. As far as the base file, certainly how someone acclimates in the detention center, their behavior record, whether or not they're taking prescribed medicine -- all of the things that someone does

as they adjust to the Jennifer Road Detention Center are probative to a psychiatric evaluation. That's the good cause of why it's relevant to a subpoena.

But before we even get to that, the Defense is talking about a chilling effect and confidentiality. There's no basis for that argument about why the State can't issue a subpoena for a --

THE COURT: So here's my question for you. Can you just issue any subpoena to anyone at any time regarding the defendant? Do you have to have as Mr. Davis argued some kind of good cause to get information as a result of these subpoena? And if so, what is the relevance of the information that you are seeking?

MR. TUOMEY: Your Honor, there's no requirement that we show for a third-party subpoena for non-confidential, non-privileged records why we are asking for them. That good cause standard that Mr. Davis is arguing about and that chilling effect, I have no idea where that basis comes from in the law. When we want a third-party subpoena for non-privileged, non-confidential information then it shall issue I believe is the standard. The fact that someone perceives there could be a chilling effect that's not pointed to in the law doesn't create a limitation on what the State can do when it issues a subpoena.

I think, Your Honor, that the hyperbole of that

argument and what it could potentially mean is made because there is no basis to show that in the law. And I think *McFarland* and *Wallace* show that when you're at the detention center you have -- there are illogical arguments that are made in those cases about an expectation of privacy. And someone who is held at a detention center has no expectation of privacy in a record of who is coming and going at that facility. Especially when that record has no indication of the statements made between the defendant and the person coming and going or any of their communications. None of that confidentiality of privilege that Defense implies and to which the Court refers is based in a legal argument. And *Wallace* and *McFarland* are clear that that expectation of privacy -- when we're talking about someone's mail, someone's sealed outgoing mail, it just isn't there. Because we're not intruding on a communication, we're not talking about what Mr. Ramos said as was at issue in the cases cited. We're just talking about the comings and goings, it's not even as intrusive as in those cases.

Your Honor, as far as the base file and the defendant's acclimation the information in that file could be incredibly helpful in cross-examining the mode of inquiring of the defendant coming to a conclusion as far as psychiatric evaluation; whether or not certain pieces of evidence from a base file were considered or weren't

considered; how someone acclimated immediately after this offense; what, if any, observations were noted after that event; whether or not they persisted; whether or not they ended at a certain period of time; how someone interacted with guards and other inmates; whether or not they made demands to be treated a certain way or not. All of that is probative in evaluating a mental illness, how some acclimates.

Your Honor, there is -- it feels a little as if Defense is making an attorney-client privilege to the comings and goings at the center. It's calling it confidentiality and it's just not there. And I think that the ability of an attorney to work with their client has been considered. And the cases that we cited in our initial response are clear that is it communications. The topic, the issue is communications. So just an objective list is not covered. It's not harmed or no right to counsel is infringed in any way by that objective list being provided.

And, Your Honor, I think when you -- the courts have considered privilege, confidentiality, right to privacy in *Wallace* and *McFarland*. And in *McFarland* the court held that to invoke a protection an individual bears the burden of demonstrating that they had a justifiable reason or legitimate expectation of privacy from a government action. You have no expectation of privacy in a list maintained by

the correctional center. There is no expectation of privacy in that list whatsoever. So if there is no expectation of privacy, it's not a communication, it's not privileged. It's not confidential because we're not asking the Defense for it. We're asking the institution for it.

Court's brief indulgence.

So, Your Honor, I think that for the standards at issue we have covered the privilege and the confidentiality of the various information that we are seeking.

As far as the educational records I think that they are certainly relevant to the issue, at least that's what I've garnered from my conversation with experts, that they would be probative in a pleading of not criminally responsible. So they certainly are relevant to the issue at hand.

And as far as privileged records there's just no privilege to be asserted over the information that the Defense is arguing that it exists over. As far as the educational records and *Zaal* I think that the Defense has put those records at issue by pleading not criminally responsible and giving the State good cause to ask for those records for the reasons that we have already argued.

So I will submit on that, Your Honor.

THE COURT: Okay. Anything further, Mr. Davis?

MR. DAVIS: Well, yes. I mean, first of all it

seems to me the State doesn't recognize the difference, I guess, or the importance of attorney confidentiality in the representation of a client. And they don't appreciate the fifth amendment or the sixth amendment or anything else.

I mean, the Rule clearly says it's 19-301.6, an attorney shall not reveal information. I mean, the Rule is called Confidentiality of Information. But the Rule itself says, an attorney shall not reveal information relating to representation of a client. In essence, every time we send somebody to the jail to see Mr. Ramos or any other client, if that information is available to the State then that is our responsibility. We have now revealed that to the State if this information is available to the State. That's on our watch because we're the one who set it up, we're the one who had that person go in. So, in essence, if the Court lets this happen we are the party that is now revealing that information to the State.

And that's just -- to think that that information is accessible to the State when they haven't shown any reason that they want it, right? Just saying, well, it's not confidential, it's not privileged so therefore give it to us -- that's not appropriate under these circumstances. Because, again, if the State came asking us well, Bill, who'd you have see your client? I would be in violation. But that's in essence what they are doing. They're just

going about it in another way because the jail -- and I agree the jail has safety concerns. And the reason the jail keeps this information as stated in -- and the reason why they're allowed to do these things as stated in *Wallace* and in *McFarland* -- isn't for the purposes of prosecution. It's for the safety of the institution.

So how can it be that giving this information to the State advances the safety of the institution? It doesn't. So *Wallace* and *McFarland*, again, are not applicable to the information that the State is seeking in the visit lists.

And also in *Zaal* it clearly says, *Zaal* required a showing of, quote, "the likelihood that relevant information will be obtained as a result of reviewing the records in order to obtain pretrial disclosure of merely confidential records." To say it might be helpful or it could be helpful or there could be information, you know, that's what they were arguing then. And they said that's not enough. I mean, it's not enough to say there might be something in there. There has to be a likelihood that relevant information will be obtained as a result of reviewing the records. Not that there might be or that there could be or that there may be. And there is a difference, I would suggest to the Court, between those words and the likelihood that something is in there. And the State hasn't presented

any witnesses or any evidence or anything else to say that there is a likelihood of relevant information in any of the records they requested. But certainly there is no relevant information in the visit logs at least as they pertained, at the very minimum, to the professional visits that have taken place at the jail.

THE COURT: All right. This is what I am going to do. I will do this in reverse order.

As to the subpoena directed at the Board of Education those are different than the jail records. There is certainly a confidential privileged nature to the records. *Zaal* indicates the State must demonstrate some relationship between the charges and the information sought and the likelihood that relevant information will be obtained as a result of reviewing the records.

Based on everything I have heard I believe the State has established that the charges as it relates to the not criminally responsible plea do have a relationship to the defendant's schooling records and there is a likelihood that relevant information will be obtained as a result of the reviewing of the records.

That said, what I am going to direct is that the subpoena may issue in terms of a form of an in camera review. In other words, the records are to be delivered to my chambers. Each side can come and review the records. I

am not going to be the one to determine whether or not the information is relevant because I don't believe I can make that determination. It is up to the State and the Defense to determine if their position is that that information is relevant at which point in time I will hear from -- if both sides agree that's fine. If you want to be heard as to the relevancy and sharing that information with your experts, if there is some debate about it, then I'll hear you as to that issue regarding the in camera review of the records.

As to the records at the detention center. Let me begin with the base file including housing records, disciplinary infractions, reports, et cetera. First of all, the State correctly indicates that there is no privilege associated with those documents. And nothing that I have heard from the Defense that suggests to me that there is any real issue as is associated with those. Certainly, I can see that there could be even though *Zaal* is not really applicable in that scenario a relationship between those records and the defendant's criminal responsibility and/or even guilt or innocence.

So I am going to allow the subpoena to issue as to the base file.

As to the records of jail calls and visitor logs, I will allow that to issue, again, as there is no privilege. However, I am concerned regarding the attorney-client

related issues so I will direct that they be redacted as to professional visits to the detention center, professional visits between Defense counsel and/or other professionals sent there on behalf of Defense counsel. That information is to be redacted from the records. I am concerned that it is treading too closely in the issues of the attorney-client relationship and so I will allow those records to be subpoenaed with that redaction.

MR. DAVIS: So if I just may ask two things. The Court, as I understand it, is already in possession of them. Okay?

MS. LEITESS: Yes. In chambers.

THE COURT: I believe that's correct.

MR. DAVIS: The concern I have --

THE COURT: What am I in possession of, though? I haven't looked at any of it.

MS. LEITESS: All of the jail records.

MR. DAVIS: The last time Mr. Culpepper was here he gave the Court what the State had requested. There's two concerns I have.

THE COURT: And I have not reviewed those because I did not think that was appropriate.

MR. DAVIS: Yes, ma'am, I understand that. There's two concerns I have. The concerns I have is that I believe the professional visits are reported in the base

file. So it's not just a separate thing but any visits that occur with the client or with the inmate, if you will, are also located in the base file.

THE COURT: Okay.

MR. DAVIS: So the professional visits would also have to be redacted from the base file. My understanding in speaking to the jail previously is that medical records are not part of the base file. If the medical records are part of that base file I would ask that they also be redacted. Because that's not what they're asking for in their subpoena. And that then does get into privileged information of medical records, psychological records, things of that nature that are separate and apart from confidential records.

THE COURT: All right, this is --

MR. DAVIS: But my understanding is they are not supposed in the base file. They are separate and apart.

THE COURT: This is what I think makes the most sense. Is for the Defense to review the records in camera -- or, in chambers. And indicate without using names --

MR. DAVIS: Right.

THE COURT: -- what you are asking to be redacted. Then I will look at them and make sure that I believe it is appropriate and if I do I will allow the redaction to occur.

I will ask the Defense to do it. And then they will be turned over to the State.

MR. DAVIS: When does the Court want us to do that? I don't think today is feasible.

THE COURT: Probably not today given the lateness of the hour. Can you do it within the next two days?

MR. DAVIS: Yes.

THE COURT: Okay.

MS. LEITESS: So as far as the medical records or any psychiatric, Your Honor, again if there is evidence of infraction or medical or any of that the defendant has waived his privilege to have his --

THE COURT: I haven't ruled that those are not to be turned over.

MS. LEITESS: Okay.

THE COURT: So I don't know what's in the records so I can't --

MS. LEITESS: But Counsel is pre-empting or seems to be pre-empting and saying that we can't have them.

MR. DAVIS: Well, they didn't ask for them.

MS. LEITESS: We asked for all records. We asked for all records.

THE COURT: They did. Let's see what the records have. Let's see what's in there. I don't know what's in there. They did ask for the entirety including housing,

disciplinary infractions, reports, et cetera.

MR. DAVIS: Correct. There's nothing about medical in that subpoena. And as I said, my understanding in my knowledge of the jail is that those records are separate and apart from the base file.

THE COURT: Well, I don't know what they sent.

MR. DAVIS: Right.

THE COURT: So -- and you don't know what they sent, and Ms. Leitess doesn't know what they sent and it may prompt Ms. Leitess to file another motion.

MS. LEITESS: So, Your Honor, and also the time between when we got those -- I can't remember if that was June 3 -- and today, which is however many weeks, five, six weeks --

THE COURT: Right. There is going to be additional information.

MS. LEITESS: So how do we handle that, Your Honor? As far as getting the gap and the continuing --

THE COURT: that's a good question.

MR. DAVIS: I think the Court -- and I would ask that the Court do this -- just simply contact the jail and ask them to deliver any updated records of that nature.

THE COURT: I will. My law clerk is sitting in the courtroom and I am going to ask her to contact the detention center first thing in the morning and ask them to

update the records pursuant to the subpoena.

MR. DAVIS: And I don't want to tell the Court how to do this. But Mr. Culpepper is the attorney that represents the jail. Maybe that would be the better way to go. I don't know. I'm just mentioning that.

MS. LEITESS: Meaning he could be a contact person.

MR. DAVIS: Because he's the one who provided them to the Court to begin with.

MS. LEITESS: Meaning he's a good contact person.

THE COURT: Okay.

MS. LEITESS: Mr. Phil Culpepper.

THE COURT: No, I appreciate the guidance. It's helpful, Mr. Davis.

MR. DAVIS: The Court had mentioned at the beginning of the day concerning the defendant's motion for subpoena for tangible evidence that relates to Mr. McCarthy and that you wanted to do something with those today.

THE COURT: Yes. My thought was that a motion needed to be -- perhaps a hearing needed to be set. Maybe it would be cancelled but I wanted to get something down. But we won't be able to do that right now because we've gone past the bewitching hour so Assignment is --

MR. DAVIS: All right. But our position would be that since no one has responded within five days that the

subpoena should be issued and if they want to object they can come in and object at that time.

THE COURT: Okay. Well, I'm not doing anything right now --

MR. DAVIS: Okay.

THE COURT: -- based on the hour. And nothing will happen if I do it right now in any scenario.

MR. DAVIS: Right.

THE COURT: So we will address that shortly.

MR. DAVIS: Okay. All right.

MS. PALAN: She's going to address it when?

MR. DAVIS: Shortly.

THE COURT: Shortly. And why don't you approach?

MS. LEITESS: All of us, Your Honor?

THE COURT: Yes.

(Counsel approached the bench, and the following ensued:)

THE COURT: I'm just out for the next two days. So --

MS. LEITESS: Out of the courtroom.

THE COURT: -- I won't be here for the next two days. But my law clerk will be here and so you can come see the records.

MS. PALAN: Do you want us to come right away or wait until we get the additional ones?

THE COURT: What's that?

MS. PALAN: The gap records that we were talking about. Otherwise we'd have to come twice.

THE COURT: Right. I don't want them to take your client out of the courtroom before we --

MR. DAVIS: No. Guys, if you could please wait a moment.

THE COURT: Yes, please don't take Mr. Ramos out until we are done, okay?

THE DEPUTY: We're just (indiscernible).

THE COURT: Okay. That's fine. All right. What we're going to is you're going to contact -- and for the record, my law clerk is standing here right now. She's going to contact the detention center -- are you here in the morning?

THE LAW CLERK: Yes.

THE COURT: She is going to contact the detention center in the morning and ask them for the updated records. You all are welcome to copy each other and communicate with her any suggestions you have regarding how to obtain the updated records.

MS. LEITESS: There's an attorney for the detention center, Your Honor. Phil Culpepper, through the County Office of Law. I would suggest he's the most efficient person to contact to get that done.

THE COURT: And then -- and tell them we want it immediately.

THE LAW CLERK: Okay. Sent through --

THE COURT: They deliver the records. We want them immediately and then as soon as we have them contact both sides, let them know they are here, and they need to come to the criminal room and view them and then (indiscernible).

MS. LEITESS: Just that they need the things between when they delivered them on the third of June to date.

THE LAW CLERK: Okay.

THE COURT: Okay. Is that good with everybody? Okay.

MS. LEITESS: Thank you, Your Honor.

THE COURT: All right, thank you.

(Counsel returned to the trial tables, and the following ensued in open court:)

THE COURT: All right, counsel, that should be it for today. Yes?

MS. LEITESS: Thank you, Your Honor.

THE COURT: All right. Thank you all.

MS. PALAN: Thank you, Your Honor.

MS. O'DONNELL: Thank you.

THE COURT: All right. You may take Mr. Ramos out

now. Any reason we can't return the exhibits? They are scanned in.

MS. LEITESS: That's fine.

MS. PALAN: Oh, you don't need physical copies?

MS. LEITESS: They're all scanned in.

MS. PALAN: Okay. Well then I'll take those, thank you. Thank you very much.

(At 4:59 p.m., proceedings conclude.)

CERTIFICATE OF TRANSCRIBER

I hereby certify that State of Maryland versus Jarrod Warren Ramos, Case No. C-02-CR-18-001515, heard in the Circuit Court for Anne Arundel County, Maryland, on July 17, 2019, was recorded by means of digital audio recording.

I further certify that, to the best of my knowledge and belief, page numbers 3 through ?? constitute a complete and accurate transcript of the proceedings as transcribed by me.

I further certify that I am neither a relative to nor an employee of any attorney or party herein and that I have no interest in the outcome of this case.

In witness whereof, I have affixed my signature this 27th day of August, 2019.

Bonnie L. Golian

Bonnie L. Golian

Legal Transcriptionist

CERTIFICATE OF TRANSCRIBER

I hereby certify that the proceedings in the matter of The State of Maryland versus Jarrod Warren Ramos, Case No. C-02-CR-18-1515 heard in the Circuit Court for Anne Arundel County, Maryland, on Wednesday, July 17, 2019, before the Honorable Laura S. Ripken, were recorded by means of audiotape.

I further certify that, to the best of my knowledge and belief, page numbers one through one hundred forty-three constitute a complete and accurate transcript of the proceedings as transcribed by me.

I further certify that I am neither a relative to nor an employee of any attorney or party herein, and that I have no interest in the outcome of this case.

In witness whereof, I have affixed my signature this 27th day of August, 2019.

Sally S, Gessner

Sally S. Gessner, CER

Certified Electronic Court Reporter